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LAWS OF WISCONSIN ^{cf}

CONCERNING THE

ORGANIZATION AND GOVERNMENT

OF TOWNS

AND THE

POWERS AND DUTIES OF TOWN OFFICERS AND
BOARDS OF SUPERVISORS

WITH

PRACTICAL FORMS.

Compiled pursuant to chapter 293, Laws 1885, by

GEORGE B. CARTER,

COUNSELOR AT LAW.

PUBLISHED BY AUTHORITY.

MADISON, WIS.:
DEMOCRAT PRINTING CO., STATE PRINTERS.
1885.

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US/WI
3691
E. 85

Lea wis. 135
T747
885

Wisconsin: Separate Laws.

JAN 23 1935

HC

CHAPTER 293. LAWS OF 1885.

AN ACT to provide for the compilation and publication of town laws of this state.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. The governor, attorney general, and state librarian are hereby authorized to cause the laws of this state relating to towns and town government in force when this legislature adjourns, to be compiled; such compilation to include all necessary practical forms for the use of town officers, together with a full and correct index of laws and forms; and for that purpose said officers may enter into contract with a competent person or persons for the compilation of such work, at a cost not to exceed twelve hundred dollars.

Laws relating to towns and town government to be compiled and published.

SECTION 2. Upon the completion of the manuscript of such compilation, the attorney general and state librarian shall examine the same, and when satisfied of the correctness of the compilation and sufficiency of the forms and index, shall so certify to the secretary of state, stating the amount to be paid therefor and to whom, whereupon the secretary of state shall draw his warrant upon the general fund, for the amount payable to the person or persons named by the attorney general and state librarian.

Attorney general and state librarian to examine same and certify to secretary of state.

SECTION 3. The manuscript shall then be delivered to the secretary of state, who shall cause eight thousand copies thereof, to be printed and bound in the same style as the laws of 1885, and shall distribute them as follows: One copy to each member of the legislature, and five copies to each organized town in the state; the remaining copies to be turned over to the superintendent of public property for sale at one dollar per copy to citizens of the state.

Manuscript to be delivered to secretary of state.

How to be distributed.

SECTION 4. There is hereby appropriated, out of any money in the treasury not otherwise appropriated, a sum of money sufficient to pay for said compilation, printing and binding.

Appropriate a sum of money.

SECTION 5. This act shall take effect and be in force from and after its passage and publication.

Approved April 4, 1885.

LAWS OF WISCONSIN

RELATING TO THE ORGANIZATION AND GOVERNMENT OF TOWNS.

OF ELECTIONS.

SUFFRAGE.

(CONSTITUTION.—ARTICLE III.)

SECTION 1. (As amended November 7th, 1882). Every male person, of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the state for one year next preceding any election, and in the election district where he offers to vote such time as may be prescribed by the legislature, not exceeding thirty days, shall be deemed a qualified elector at such election:

Who are qualified electors.

5 Wis. 308.
9 Wis. 279.
38 Wis. 71.
14 Wis. 497.
16 Wis. 443.
17 Wis. 526-674.
20 Wis. 544.
49 Wis. 555.
50 Wis. 108.
53 Wis. 49.

1. White citizens of the United States (*a*).
2. White persons of foreign birth, who shall have declared their intention to become citizens, conformably to the laws of the United States on the subject of naturalization (*b*).

(*a*) It was held by the Supreme Court in the case of *Gillespie v. Palmer et al.* 20 Wis. 544, that the right of suffrage was, at the general election November 6, 1849, extended to colored persons.

(*b*) Children of aliens, who during minority, came to this country with their parents, may become citizens by virtue of the full naturalization of their fathers; but the mere fact that their fathers have declared their intentions to become citizens does not make such children citizens, either of the United States or of this state, nor entitle them to vote here. [*In re Conway and Gibbons*, 17 Wis. 526]

3. Persons of Indian blood who have once been declared by law of congress to be citizens of the United States, any subsequent law of congress to the contrary notwithstanding.

4. Civilized persons of Indian descent, not members of any tribe. *Provided*, That the legislature may, at any time, extend by law, the right of suffrage to persons not herein enumerated; but no such law shall be in force until the same shall have been submitted to a vote of the people at a general election, and approved by a majority of all the votes cast at such election (a).

Who not qualified electors.

SECTION 2. No person under guardianship, *non compos mentis*, or insane, shall be qualified to vote at any election; nor shall any person convicted of treason or felony, be qualified to vote at any election unless restored to civil rights.

Votes to be by ballot.

SECTION 3. All votes shall be given by ballot, except for such township officers as may by law be directed, or allowed, to be otherwise chosen.

Residence not lost by absence in public service.

SECTION 4. No person shall be deemed to have lost his residence in this state, by reason of his absence on business of the United States or of this state.

Soldiers, seamen, etc., not deemed resident, when.

SECTION 5. No soldier, seaman, or marine, in the army or navy of the United States, shall be deemed a resident of this state in consequence of being stationed within the same.

Who may be excluded from right of suffrage.

SECTION 6. Laws may be passed excluding from the right of suffrage all persons who have been or may be convicted of bribery, or larceny, or any infamous crime, and depriving every person who shall make, or become directly or indirectly interested in, any bet or wager depending upon the result of any election, from the right to vote at such election.

OF ELECTORS AND GENERAL ELECTIONS.

Electors.

1 Pin. 77.
5 Wis. 308.
9 Wis. 279.
20 Wis. 544.

SECTION 12. (As amended by section 1, Ch. 39, L. 1883). Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the state for one year next preceding any elec-

(a) Sec. 1, Art. 3 of our Constitution is to be construed as providing for an extension of suffrage, in case a majority of all the votes on that subject, cast at any general election at which the question is submitted, shall be in its favor. [*Gillespie v. Palmer et al.* 20 Wis. 544]

tion, and in the election district where he offers to vote, ten days, shall be deemed a qualified elector at such election:

1. Citizens of the United States.
2. Persons of foreign birth, who shall have declared their intention to become citizens conformably to the laws of the United States on the subject of naturalization.
3. Persons of Indian blood, who have once been declared by law of congress to be citizens of the United States, any subsequent law of congress to the contrary notwithstanding.
4. Civilized persons of Indian descent, not members of any tribe (a).

Who are electors.

Every person convicted of bribery shall be excluded from the right of suffrage, unless restored to civil rights, and no person who shall have made or become directly or indirectly interested in any bet or wager depending upon the result of any election at which he shall offer to vote, shall be permitted to vote at such election.

Who are not electors.

SECTION 13. No elector shall vote except in the town, ward, village, or election district in which he actually resides (b).

To vote at residence.

16 Wis. 398.
56 Wis. 266.

SECTION 14. (As amended by section 2, Ch. 39 L. 1883.) The general elections prescribed in the constitution shall be held in the several towns, wards, villages and election districts on the Tuesday next succeeding the first Monday of November, A. D. 1884, and biennially thereafter, at which time there shall be chosen such representatives in congress, electors of president and vice-president, state officers and county officers as are by law to be elected in such year.

56 Wis. 266.

SECTION 15. All elections shall be held in each town at the place where the last town meeting was held, or at such other place as shall have been ordered at such last meeting, or as shall have been ordered by the supervisors when they establish more than one election poll, except, that the first election after the organization of a new

Place of holding election in towns, cities, or villages.

(a) See chapter 84, laws of 1879, conferring the elective franchise upon certain civilized descendants of the Chippwas of Lake Superior, page 54 of this work.

(b) A resident and elector of a village organized under Chap. 40 R. S., cannot vote for Town officers at the Town meetings of the Town within the limits of which the Territory composing was formerly situated. (*Jones v. Kolb*, 56 Wis. 263).

In cities or villages where elections to be held.

town shall be held at the place directed in the act or proceeding by which it was organized; and all elections in villages constituting separate election districts, and in the wards of cities, shall be held at the places to be ordered by the trustees of such village, or the common council of such city, at least ten days before such election, unless a different provision is made in the act incorporating such village or city.

Adjournment of elections to other places.

SECTION 16. Whenever it shall become impossible or inconvenient to hold an election at the place designated therefor, the board of inspectors, after having assembled at, or as near as practicable to such place, and before receiving any votes, may adjourn to the nearest convenient place for holding the election, and at such adjourned place shall forthwith proceed with the election. Upon adjourning any election as hereinbefore provided, the board of inspectors shall cause proclamation (1) thereof to be made, and shall station a constable or some other proper person at the place where the adjournment was made, to notify all electors arriving at such place of the adjournment and the place to which it was made.

Proclamation and notification of.

Notices of election given by secretary of state.

53 Wis. 248.

SECTION 17. (As amended by section 1, Ch. 327, L. 1883.) The secretary of state, between the first day of July and the first day of September in each year in which a governor, lieutenant-governor, secretary of state, treasurer, attorney-general, state superintendant, railroad commissioner and insurance commissioner, representatives in congress, members of the assembly or state senators, are to be elected for a full term of office, or in which electors of president and vice-president are to be elected, shall make out a notice in writing, stating that at the next general election the officers aforesaid, or so many of such officers as are then to be chosen, are to be elected, and specifying in the case of such representatives and senators the respective districts in which they are to be elected, and shall publish a copy of such notice in a newspaper printed at the seat of gov-

(1) *Form of Proclamation.*

Hear ye! hear ye! hear ye! The polls of this election are adjourned to (*state place to which polls are adjourned*), at which place the election will forthwith be proceeded with.

ernment, once in each week, from the date of such notice until the election to which it refers; and shall transmit by mail a like notice to the county clerk of each county in which such election is to be held, specifying the said officers to be voted for in said county, and in case of a senator, the number of his district.

SECTION 18. (As amended by section 2, Ch. 327, L. 1883.) The county clerk thereupon shall forthwith cause a notice (1) containing the substance of the notice so received by him, together with a statement of the several county officers that are to be elected, to be transmitted by mail to each town clerk, and the town clerk of each village in which, by virtue of its act of incorporation, general elections are to be held, and to one of the inspectors of election in each ward in any city of his county, and shall also publish a copy thereof in a newspaper published in his county, if there be one, and if there be none, then in a newspaper published in an adjoining county, once in each week from the date of such notice until the election to which it refers. Whenever the office of county clerk shall be vacant, and there shall be no person authorized to perform his duties, the sheriff shall receive, make out, transmit by mail and publish such notices.

Notice by
county clerk.

20 Wis. 285.
22 Wis. 363
53 Wis. 248.

(1). *Form of County Clerk's Notice to Town and Village Clerks and Inspectors of Election in Wards of Cities.*

— County. County Clerk's Office, —, 18—.

SIR:— A general (or special) election is to be held in the several towns and wards in this county, on the Tuesday next succeeding the first Monday, being the — day of November, 18—, at which are to be elected the officers specified in the annexed copy of a notice from the secretary of state — (*In case of a special election ordered by the governor, say: officers specified in the annexed copy of a proclamation of the governor*); also a member of assembly in place of —, whose term of office will expire on the first Monday of January, 18—. (*In counties comprising more than one assembly district, notice should read: A member of assembly in the first assembly district, comprising the towns of (here enumerate towns), in place of — (and so of each district in the county), whose several terms of office will expire, etc. (When county officers are to be elected, they also will severally be named in a similar manner.)*)

County Clerk.

To —, Esq., town or village clerk, or inspector of election in ward of city.

To this notice should be annexed a copy of the notice from the secretary of state.

Notice by town
clerks, etc.

22 Wis. 363.
25 Wis. 447.
56 Wis. 266.

SECTION 19. Every town and village clerk and the inspectors in any ward in any city, ten days previous to any general election, or on receiving any such notice, shall give notice (1) to the town, ward and village electors respectively, by posting notices in five conspicuous places in the towns, wards and villages aforesaid, stating the time and place at which the election will be held, and the officers to be chosen, and whether any of the officers to be chosen are to fill vacancies, and the names of the last incumbents of the offices in which vacancies exist.

REGISTRY OF ELECTIONS.

Registry of
electors where
required.

21 Wis. 536.
23 Wis. 630.
38 Wis. 71.

SECTION 20. (Restored by chapter 310, L. L. 1885.) A registry of electors shall annually be made:

1. In each ward or election district of every city which at the last previous census, had a population of three thousand or more.

2. In each ward or election district of every incorporated village, in which by law separate elections are held, which village, at the last previous census, had a population of fifteen hundred or more.

3. (As amended by Ch. 234, L. 1880). In every town containing a village, which village

(1) *Form of Notice by Town or Village Clerk (or Inspector of Ward.)*

NOTICE.

Notice is hereby given, that the ensuing general (or special) election, at which are to be elected the following officers, to wit: *(here copy a list of the officers as contained in the notice of the secretary of state and in the notice of the county clerk of the county)*, will be held at _____, in the town of _____ (or _____ ward of _____), on the _____ day of November next, and that the poll of the election will be open at nine o'clock in the forenoon, and close at sunset on that day.

Dated _____, 18—.

Town Clerk.

Town and village clerks, and inspectors of elections in each ward in any city, are required to post up notices of each election, in each town, village or ward, ten days prior to such election, in five conspicuous places in such town, village or ward. Such notice must specify the time and place of holding the election, and the officers to be chosen. In case vacancies are to be filled, the notice must so state, giving the names of the last incumbents of the offices in which such vacancies exist. (See section 80. Compiler).

at said census had a population of fifteen hundred, or more, in which village separate general elections are not by law required to be held; and for the purpose of carrying out the provisions of this act, the enumeration of the inhabitants of the villages in this state shall at every such census hereafter taken, be taken separate and apart from that of the towns in which villages may be situated. And until a census shall be so taken and the population of such village determined as herein mentioned, no registry shall be held or taken in the towns not embraced within the other provisions of this section.

Registry of electors in towns containing villages of over 1500 inhabitants.

4. In all towns, any part of which shall have been embraced in any part of any city or village in which a registration is by this chapter required.

Such registration shall be made in the manner provided by this chapter. The persons authorized by law to act as inspectors of election in each of such towns, wards or election districts, shall constitute the board of registry therefor.

Board of registry.

SECTION 21. The said inspectors shall have their first meeting on Tuesday, four weeks preceding each general election, at the place where said election is to be held; and in election districts at which there were polled at the previous general election three hundred votes or less, they shall sit for one day, and in districts at which there were more than three hundred votes polled, they shall have power to sit two days, if necessary, for the purpose of making such list. They shall meet at nine o'clock in the forenoon, and hold their meetings open until eight o'clock in the evening of each day during which they shall so sit. The clerks appointed by law to act as clerks of election shall act as clerks of the board of registry on the day of election only. Their proceedings shall be open, and all electors of the district shall be entitled to be heard in relation to corrections or additions to said registry. They shall have the same powers to preserve order which inspectors of elections have on election days; and, in towns, vacancies in the board shall be filled in the same manner that vacancies are filled at elections.

Meetings of board.

Power of, etc.

SECTION 22. The said inspectors, at their first meeting, and before doing any business, shall severally take and subscribe the oath of inspectors at

To take oath.

a general election (a), and said inspectors shall, at their first meeting, make a registry of all the electors of their respective districts, placing thereon the full names, alphabetically arranged according to surnames, in one column, and in another the residence by number and name of the street, or other location if known. If any elector's residence is at any hotel or public boarding-house, the name of the hotel or boarding-house shall be stated in the registry. They shall put thereon the names of all persons residing in their election district appearing on the poll list kept at the last preceding general election, and are authorized to take therefor such poll list from the office where kept, omitting such as have died or removed from the district, and adding the names of all other persons known to them to be electors in such district. In case of the formation of a new election district since the last preceding general election, the said board therein may make such registry from the best means at their command, and may, if necessary, procure therefor certified copies of the last poll lists. They shall complete said registry, as far as practicable, at their first meeting, and shall make four copies thereof, and certify the original and each copy to be a true list of the electors in their district, so far as the same are known to them; one of said copies shall be immediately posted in a conspicuous place in the room in which their meeting was held, and be accessible to any elector for examination or making copies thereof, and one copy shall be retained by each inspector for revision and correction at the second meeting. They shall, within two days after such first meeting, file the original registry made by them, and said poll lists, in the office of the proper town, city or village clerk, and may, in their discretion, cause ten printed copies of said registry to be made and posted in ten of the most public places in said election district, or may publish the same in a newspaper, at an expense not exceeding one cent for each name.

Registry, how made.

In new election districts, how made.

Copies of registry, where kept and posted.

Original to be filed with clerk, etc.

Registry may be posted or published.

Time and place of second meeting.

SECTION 23. The inspectors shall hold their second meeting at the same place designated for holding elections, on the Tuesday two weeks pre-

(a). See form of oath under section 28.

ceding the election. They shall meet at nine o'clock in the forenoon. In election districts having less than three hundred voters, as shown by the preliminary registry, the board shall complete the registry on the same day; but if there are more than that number of voters, they shall sit for two days. They shall remain in session until eight o'clock in the evening. They shall revise and correct the registry; first, by erasing the name of any person who shall be proved to their satisfaction, by the oaths of two electors of the district, to be not entitled to vote therein at the next ensuing election, unless such person shall appear and, if challenged, shall answer the questions and take the oath hereinafter provided; secondly, by entering thereon the name of every elector entitled to vote in the district at the next election, who shall appear before the board and require it, and state his place of residence, giving street and number, if numbered, or location, as hereinbefore provided, and, if challenged, answer the questions and take the oaths provided in case of a challenge at an election; but if any such person shall refuse to answer all such questions or to take such oaths, his name shall not be registered. Any person who is not twenty-one years of age before the date when the registry is required to be corrected, but will be if he lives until the day of election, shall have his name put on such registry if he be otherwise qualified to be an elector. Any elector who did not vote at the previous general election shall be entitled to be registered, either at the preliminary or final registration of electors, by appearing before the board of registration of his election district and establishing his right to be registered, or instead of a personal appearance, he may make his application to be registered to the board in writing. Such application (1) shall state the name

List revised by
striking off.

By adding to.

When minors
may be put on
the list.

Who may ap-
ply to be put
on, and how.

(1) *Form of Application for Registration.*

STATE OF WISCONSIN, }
County of _____, } ss.

A — B —, being duly sworn, says that his name is —
—: that he is — years of age; that he has continuously
resided within this election district at (give number and
street) for (give time of continuous residence); (and in case
the person making the application is of foreign birth) that he
came to the United States on the — day of —, A. D.

and period of continuous residence in the election district and place of residence therein, giving the number and street of the applicant, and, in case the person making the application is of foreign birth, he shall state when he came to the United States and to the state of Wisconsin, and the time and place of declaring his intention to become a citizen of the United States, and that he is entitled to vote at the election. Upon receiving such application the board of registration shall register the name of such applicant, if it appears to the board that the applicant is by his statement entitled to vote. Such statement shall be made under oath and shall be preserved by the board and be filed in the office of the village or city clerk, as the case may be. All city and village clerks shall keep blanks for making the application for registration as provided by this section. The form shall be prescribed by the secretary of state. Every person named in this section shall be subject to the same punishment for any false statement or other offense in respect thereto, as is provided in case of such false statement or other offense by an elector offering to vote at an election. After such registry shall have been fully completed on the days above mentioned, no names shall be added thereto by any person or upon any pretext. Within three days after the second meeting, the said board shall cause four copies of the registry to be made, each of which shall be certified by them to be a correct registry of the electors of their district, one of which shall be kept by each inspector for use on election day, and one shall be forthwith filed in the office of the proper town, city or village clerk. All registries shall at all times be open to public inspection, at the offices where deposited without charge.

Form of application.
Penalty for false statement.

Copies of registry to be certified and kept.

Not entitled to vote unless name is on registry.

SECTION 24. (As amended by Ch. 315, L. 1880.) On election day the inspectors shall designate two of their number at the opening of the polls, who shall check the name of every elec-

18—, and to the state of Wisconsin on the — day of —, A. D. 18—; and that at —, in the county of —, in the state of —, he declared his intention to become a citizen of the United States; and that he is entitled to vote at the election. A — B —.

Subscribed and sworn to before me, this — day of —, A. D. 18—

tor voting in such district whose name is on the registry. No vote shall be received at any general election in any ward or election district defined in section twenty, if the name of the person offering to vote be not on the said registry made at the second meeting as aforesaid, except as hereinafter provided; but in case any one shall, after the last day for completing such registry, and before such election, become a qualified voter of the election district, he shall have the same right to vote therein at such election as if his name had been duly registered; *provided*, he shall at the time he offers to vote deliver to the inspectors his affidavit, (1) in which he shall state the facts showing that he has since the completion of such registry become a qualified elector of such district, and the facts showing that he was not such elector on the day such registry was completed, and shall also deliver to such inspectors the affidavits (2) of two freeholders,

21 Wis. 566.
Proviso.

(1) *Form of Affidavit of Non-Registered Elector.*

STATE OF WISCONSIN, } ss.
County of _____,

C_____ D_____, being duly sworn, says that he did not appear before the board of registry of the _____ of _____ on the last day of their meeting for completing the registry of electors of said election district, for the reason that he was not then a qualified elector in said election district, on account of _____, but that he has since the said completion of said registry become a qualified elector of said election district, by reason of _____, and that he now resides at _____.

Subscribed and sworn to before me, this _____ day of _____, 18—.

(2) *Affidavit of Freeholder.*

STATE OF WISCONSIN, } ss.
County of _____,

M_____ N_____, being duly sworn, says that he is a freeholder and elector in the _____ of _____; that he resides at _____; that he is personally acquainted with C_____ D_____, whose name appears subscribed to the foregoing affidavit; that he knows of his own knowledge that said C_____ D_____ has resided in this state for one year next preceding this date; and ten days within such election district; that said C_____ D_____ now resides in said election district at _____; that said C_____ D_____ is a qualified elector of said election district, and that the statements of the said C_____ D_____ in his foregoing affidavit are true.

Subscribed and sworn to before me, this _____ day of _____, 18—.

Affidavit of
non-registered
voters.

Corroborating
affidavits.

electors in such election district, corroborating all the material statements in his affidavit. In case any person, who was a voter at the last previous general election in any election district in this state, shall not be registered, such person shall be entitled to vote on making affidavit (1) that he was entitled to vote at such previous general election in one of the election districts of this state, naming the same, and that he has not become disqualified by reason of removal from such election district, or otherwise, since said election; or, in case he shall have removed therefrom, stating the fact of such removal, and that he is then a legal voter of the election district where he shall offer to vote; and in case any person, who was not a qualified elector of the last previous general election, but has become such by residing in the state for one year, shall not have been registered, he shall be entitled to vote on making affidavit that he is a qualified elector, each of which affidavits shall be substantiated by the affidavits (2) of two freeholders, as is provided for other non-registered voters. No one freeholder shall be compe-

(1) *Form of Affidavit of Non-Registered Elector.*

STATE OF WISCONSIN, } ss.
County of ———.

E— F—, being duly sworn says that he was entitled to vote at the last previous general election held in and for — of —, and that he has not become disqualified by reason of removal from said election district, or for any other cause, since said election, and that he now resides at —, in said election district.

Subscribed and sworn to before me, this — day of —, 18—.

— —.

(2) *Affidavit of Freeholder.*

STATE OF WISCONSIN, } ss.
County of ———.

A— B—, being duly sworn, says that he is a freeholder and elector in the — of —; that he resides at—; that he is personally acquainted with E— F—, whose name appears subscribed to the foregoing affidavit; that he knows of his own knowledge that said E— F— was entitled to vote at the last previous general election, held in and for said election district, and has not become disqualified by reason of removal from said election district, or for any other cause, since said election, and that said E— F— now resides at —, in said election district.

Subscribed and sworn to before me, this — day of —, 18—.

— —.

tent to make at any one election corroborating affidavits for more than three voters, all of said affidavits shall be sworn to before some officer authorized by the laws of this state to take depositions. The inspectors shall keep a list of the names and residences of the electors voting, whose names are not on said completed registry, and attach such list to the registry and return it together with all such affidavits to the proper town, city or village clerk. No compensation shall be paid or received for taking or certifying any such affidavit. On the day following the election, one of said poll lists and one copy of the registry so kept and checked shall be attached together and filed in the office of the proper town, city or village clerk, and the other of said poll lists and copy of the registry so kept and checked shall be returned to the county clerk with the returns of the election; such inspectors shall give notice by public advertisement in a newspaper printed in the city, village or town where such registration was made of the registry, and shall include in such notice all additions to and omissions from the preliminary lists, and shall also state where the election is to be held. In case there be no newspaper printed in such city, village or town, such notice shall be given by posting copies thereof in three or more public places in each ward or election district in such city, village or town. For publication of such notices in any such newspaper, the publisher thereof shall be entitled to the same compensation per folio as is prescribed for publishing other legal notices.

Filing of copy
of poll list and
registry.

Notice of regis-
try.

MANNER OF CONDUCTING ELECTIONS.

SECTION 25. There shall be three inspectors and two clerks of election at each poll at every election, who shall be qualified electors at such poll and election. Any inspector may administer any oath required by law in the registration of voters, or the conducting of an election. In towns, the supervisors, shall be such inspectors, and in case of the death absence or refusal to act of any or all of such inspectors, or where there are less than three at any poll, the electors present at the hour fixed for opening the poll shall choose, *viva voce*, from the qualified electors present, an inspector

Inspectors and
clerks.
21 Wis. 579.

Inspectors
may admin-
ister oaths.
Supervisors to
be inspectors in
towns.

Vacancies how
filled.

Clerks of election.

or inspectors for such poll, to fill such vacancy at such election. The chairman of the town, when present, shall be chairman of such inspectors. Otherwise the three inspectors may appoint one of their number to be chairman. In towns, the town clerk, if present, shall be one of the clerks of election, and the inspectors, before opening the poll, shall appoint another, and, if the town clerk be absent, two.

Inspectors and clerks, how appointed in cities and villages.

SECTION 26. The mayor of every city and the president of every village, except such cities and villages as are joined to towns for state and county elections, shall nominate to the common council or board of trustees thereof, at their first regular meeting in September of each year, and in case there be no such regular meeting, then at a special meeting, which shall be held on the last Tuesday of said month, three persons for inspectors and two persons for clerks of elections for each election district therein. Such common council or board of trustees shall immediately approve or disapprove such nominations; and in case of the disapproval of any person so nominated, such mayor or president shall immediately nominate another person for such position, and shall so continue to do until three inspectors and two clerks shall have been nominated and confirmed at such meeting. The persons so appointed inspectors and clerks shall hold their offices for one year, and shall act as inspectors and clerks at every general, municipal and special election held within their respective districts during such term. Such inspectors shall fill any vacancies in their number or in the number of such clerks, and may appoint one of their number chairman. Every person so nominated and confirmed as an inspector or clerk shall be an elector of the district for which he is appointed, shall be able to read and write the English language understandingly, and shall not be a candidate to be voted for at any election for which he is so appointed; and not more than two of such inspectors so nominated and confirmed shall be of the same political party, and the clerks shall be of opposing political parties; and when appointed to fill a vacancy, shall have the same qualifications and belong to the same political party as the person he succeeds. If, at the time fixed for the opening of the polls on the day of

Term of office.

Vacancies how filled.

Qualification of inspectors and clerks.

any election, such inspectors or clerks, or either of them, shall fail to appear or refuse to act, or have become incapable of acting by removal of residence from such election district, or for other cause, and the inspectors appearing, shall refuse to fill any such vacancy, the electors present may fill the same by *viva voce* vote.

If inspectors
refuse to act,
vacancies how
filled.

SECTION 27. (Re-enacted by Ch. 259, laws 1882, and amended by Ch. 416, laws 1885.) The town board may, when they shall deem it more convenient for the electors, at any general or special election, by their order in writing, (1) divide such town into two or more election districts, specifying the boundaries of such districts and the place or places where the polls shall be held therein, and the persons who shall act as inspectors at said polls, if present; such order shall be filed in the office of the town clerk, at least four weeks prior to the succeeding election, and a copy thereof shall be posted up in at least five of the most public places in said town for the same length of time. Within five days after making such order, said supervisors shall file a copy thereof with the county clerk. The town board shall be required to make such divisions, upon the petition in writing of fifty or more electors of any town. This act shall apply to all elections, whether general, special or town elections; provided, that all town meetings be held

Division of
town into elec-
tion districts.

(1) *Form of Order Dividing Town into two or more Election Districts.*

WHEREAS, the undersigned town board of ——— deem it more convenient for the electors of said town that there should be two (or more) election districts therein at the general (or special) election to be held in said town on the ——— day of ———, 18—, (or fifty or more electors of said town having petitioned the undersigned supervisors to divide said town into ——— districts). Now, therefore, it is ordered that said town be, and it is hereby divided into two (or more) election districts, to be known as Election District Number One, and Election District Number Two, of the town of ———, as follows: (specify the boundaries of each district) that the polls in said District Number One shall be held at ———, and A. B., C. D. and E. F. shall, if present, act as inspectors of election at such polls; that the polls in said District Number Two shall be held at ———, and G. H., I. J. and L. M. shall, if present, act as inspectors thereat (and so continue for each district).

Given under our hands this ——— day of ———, 18—.

———, } Town Board of
———, }
———, } Supervisors.

at the polling place to be known as the first precinct.

Inspectors and
clerks to take
oath.

SECTION 28. Previous to receiving any votes, the inspectors and clerks of election shall severally take an oath or affirmation that they will support the constitution of the United States and the constitution of the state of Wisconsin, and will perform the duties of inspectors (or clerks, as the case may be) of election, according to law; and will studiously endeavor to prevent all fraud, deceit or abuse, in conducting the same. Said oath or affirmation shall be in writing, shall be subscribed by the person taking the same, and shall be annexed to and returned with the poll list to the county clerk (1).

Opening and
closing of polls.

SECTION 29. (As amended by Ch. 244, L. 1881.) The polls of the election held on the Tuesday next succeeding the first Monday in November, shall be opened at nine o'clock in the forenoon, or as soon thereafter as may be, and shall be closed at sundown. The inspectors shall cause public proclamation to be made of the opening and closing of the polls. (2) The common

(1) *Form of Oath of Clerks or Inspectors.*

OATH OF CLERKS OR INSPECTORS.

Of the _____ election held in the _____ of _____, county of _____, on the _____ day of _____, A. D. 18—.

STATE OF WISCONSIN, } ss.
_____ County. }

I do solemnly swear (or affirm), that I will support the constitution of the United States and the constitution of the state of Wisconsin, and will perform the duties of clerk (or inspector) of election according to law, and will studiously endeavor to prevent all fraud, deceit or abuse in conducting the same, according to the best of my ability.

_____, }
_____, } *Clerks.*

Subscribed and sworn to before me,
this _____ day of _____, A. D. 18—.
_____, *Justice of the Peace.*

(2) *Form of Proclamation to be made at the Opening of the Polls.*

Hear ye! hear ye! hear ye! The polls of this election are opened, and all persons attending the same are strictly charged and commanded, by the authority and in the name of the people of this state, to keep the peace thereof, during their attendance at this election, on pain of imprisonment; and all person are desired to take notice that the polls will be closed at sunset (or if it be a town meeting, at five o'clock.) (In case an adjournment at noon is decided upon, add — and at the

council of any city may, by resolution adopted and published in some newspaper in the city at least ten days before election, fix an earlier hour for the opening of the polls in said city, not earlier than sunrise.

SECTION 30. There shall be provided and kept by the clerk of each town, city or village, at the expense of such town, city or village, suitable ballot-boxes for each poll therein, with a suitable lock and key to each, and there shall be one opening through the lid of each such box, of no larger size than shall be sufficient to admit a single, closed ballot. Ballot-boxes to be provided.

SECTION 31. The inspectors of election, or one of them, immediately before proclamation is made of the opening of the polls, shall open the ballot-boxes in the presence of the people there assembled, and turn them upside down, so as to empty them of everything that may be in them, and lock them; and they shall not be re-opened except as hereinafter provided in case of adjournments, until for the purpose of counting the ballots therein at the close of the polls. Boxes to be emptied and locked.

SECTION 32. Each elector shall publicly, at the poll where he offers to vote, deliver in person to one of the inspectors of election, a single ballot or piece of paper, on which shall be written or printed the names of all persons voted for by such elector, at such election, with a pertinent designation of the respective office which each person so voted for may be intended to fill, and the inspector receiving the same shall, without opening it, or permitting it to be opened or examined deposit it in the box. Elector to deliver in person a single ballot.

4 Wis. 420.
16 Wis. 146.
35 Wis. 98.

SECTION 33. If at a general election there shall be a vacancy to be supplied in the office of representative in congress, and at the same election a representative in congress is to be elected for a full term, the ballot shall designate the congress by number for which each person is intended to be chosen. Where two congressmen are to be elected, how distinguished.

hour of twelve o'clock noon, the polls will be closed for one hour.)

Of Adjournment.—Hear ye! hear ye! hear ye! The polls of this election are adjourned until *one o'clock* in the afternoon.

Of Closing.—Hear ye! hear ye! hear ye! The polls of this election are now closed.

NOTE—This proclamation should be made precisely at sunset at a general election, and at five o'clock at a town meeting.

Duties of clerk
at elections.

Electors to
state their full
name.

Electors at
registered polls
to give street
and number.

Inspectors or
any elector
may challenge.

SECTION 34. Each clerk of election shall keep a poll list on which he shall enter the full names of all persons voting at such election, in the order of their voting, and, on request of the inspectors, each elector shall state his full name before his ballot shall be received. When any person shall have taken the oath, hereinafter provided in section thirty-eight before voting, the clerk shall write at the end of such person's name on the poll list the word, "sworn." At every poll where a registry of electors is required to be made, every elector, at the time of offering his ballot shall truly state the street and number of the house or tenement, if numbered, or other location in which he resides, and the clerks of election shall truly enter in the appropriate column of the poll list, opposite the name of such elector, the street and number, or other location of such house or tenement, or the name of the hotel or boarding-house, and if such house or tenement be not numbered, the clerks shall enter, "not numbered." In case any elector offering to vote at any such poll shall refuse to make the statement aforesaid, his ballot shall not be received. The clerks of such poll shall also enter upon the poll lists, opposite the name of every elector voting thereat, whose name was not duly registered, the words, "not registered."

SECTION 35. Each inspector of election shall, and any elector may, challenge every person offering to vote whom he shall know or suspect not to be duly qualified as an elector (a).

(a) It is the duty of the inspectors to challenge every person offering to vote whom they know or suspect not to have the requisite qualifications, and to require him to answer certain questions under oath, as prescribed by Sec. 38. If he refuses to take the oath or answer the questions prescribed by that section, his vote is to be rejected; but if he take such oath and answer such questions, however false may be his answers, or however clearly they may show that he has no right to vote, if he still insists upon voting, it is their duty to tender him the oath prescribed by Sec. 38, and upon his taking that oath, to receive his vote. [*Gillespie v. Palmer*, 20 Wis. 544.]

Inspectors of election are mere ministerial officers, having no discretion to reject a vote after the person offering it has answered under oath the questions prescribed by Sec. 38, and taken the oath prescribed by Sec. 38; and an elector can maintain an action against such inspectors for unlawfully refusing to receive his vote, although such refusal was without malice. [*Id*]

[Sec 39 makes, as to persons under guardianship, *non compos mentis* or insane, an exception to the rule of the case above cited. It gives to inspectors the right to reject the vote of, and doubtless, to refuse to tender either of the oaths or put any of the questions prescribed by the statutes to any such person. And they must decide for themselves whether the person offering to vote is within the terms of the section. In their decision they probably act at their peril.]

SECTION 36. If a person offering to vote is challenged as unqualified, one of the inspectors shall tender to him the following oath or affirmation: You do solemnly swear (or affirm) that you will fully and truly answer all such questions as shall be put to you touching your place of residence and qualifications as an elector of this election; and shall thereupon put questions as follows:

Proceeding upon challenge and oaths to be administered thereon.

20 Wis. 544.

First. If the person be challenged as unqualified, on the ground that he is not a citizen and has not declared his intention to become a citizen:

1. Are you a citizen of the United States? If no, then —

2. Have you declared your intention to become a citizen of the United States conformably to the laws of the United States?

3. When and where did you declare your intention to become a citizen of the United States?

Second. If the person be challenged as unqualified on the ground that he has not resided in this state for one year immediately preceding the election:

1. How long have you resided in this state immediately preceding this election?

2. Have you been absent from this state within the year immediately preceding this election? If yes, then —

3. When you left, did you leave for a temporary purpose, with the design of returning, or for the purpose of remaining away?

4. What state or territory did you regard as your home while absent?

5. Did you while absent vote in any other state or territory?

Third. If the person be challenged as unqualified on the ground that he is not a resident of the town, ward or village where he offers his vote:

1. When did you last come into this town, ward or village?

2. Did you come for a temporary purpose merely, or for the purpose of making it your home?

3. Did you come into this town, ward or village for the purpose of voting therein?

4. Are you now an actual resident of this town, ward or village, and what is the particular description, name and location of your residence?

Fourth. If the person be challenged as un-

qualified on the ground that he is not twenty-one years of age: Are you twenty-one years of age to the best of your knowledge and belief?

Fifth. If the person be challenged as unqualified on the ground that he has made or become directly or indirectly interested in any bet or wager depending upon the result of such election?

1. Have you made in any manner any bet or wager depending upon the result of this election, or on the election of any person for whom votes may be cast at this election?

2. Are you in any manner, directly or indirectly, interested in any bet or wager depending in any way whatever upon the result of this election?

Sixth. If the person be challenged as unqualified on the ground that he has been convicted of treason, felony or bribery, and not subsequently restored to civil rights:

1. Have you ever been tried and convicted in this state of any crime? If yes, then—

2. Of what crime, when and in what court were you so convicted?

3. Have you in any manner since such conviction been restored to civil rights, and if yes, how?

Seventh. If the person be challenged as unqualified on the ground that he has been engaged, directly or indirectly, in a duel, either as principal or accessory:

1. Have you ever been engaged in any duel, directly or indirectly, either as principal or as a second, or in counseling or aiding either principal or second in a duel; and if yes, then—

2. When and where; and had you before that time been an inhabitant of this state?

Eighth. If the person be challenged as unqualified on the ground that he is a person of Indian descent, and a member of an Indian tribe, or an uncivilized Indian:

1. Are you a person of Indian descent?

2. Of what tribe or nation are you a descendant?

3. Are you now a member of any Indian tribe?

4. Have you received any annuity from the United States or any agent thereof, or shared in any, and if so, when did you last so receive or share in any?

The inspectors, or one of them, shall put such other questions to the person challenged as may be necessary to test his qualifications as an elector at such election.

SECTION 37. In determining the question of residence as a qualification to vote, the following rules, so far as applicable, shall govern, and if a person offering to vote be challenged as unqualified on the ground of residence, the inspector shall admonish him of such rules and put to him such further questions as shall be proper to elicit the facts in respect thereto, namely:

Rules governing inspectors in determining qualifications of electors.

First. As prescribed in the constitution, no person shall be deemed to have lost his residence in this state by reason of his absence on business of the United States, or of this state; and no soldier, seaman or marine, in the army or navy of the United States, shall be deemed a resident of this state in consequence of being stationed within the same.

Second. That place shall be considered and held to be the residence of a person, in which his habitation is fixed, without any present intention of removing therefrom, and to which, whenever he is absent, he has the intention of returning.

Third. A person shall not be considered or held to have lost his residence, who shall leave his home and go into another state, or county, town or ward of this state, for temporary purposes merely, with an intention of returning.

Fourth. A person shall not be considered to have gained a residence in any town, ward or village of this state into which he shall have come for temporary purposes merely.

Fifth. If a person remove to another state with an intention to make it his permanent residence, he shall be considered and held to have lost his residence in this state.

Sixth. If a person remove to another state, with the intention of remaining there for an indefinite time, and as a place of present residence, he shall be considered and held to have lost his residence in this state, notwithstanding he may entertain an intention to return at some future period.

Seventh. The place where a married man's family resides shall generally be considered and held to be his residence, but if it is a place of tem-

1 Plin. 77.

porary establishment for his family or for transient objects, it shall be otherwise.

Eighth. If a married man has his family fixed in one place, and he does his business in another, the former shall be considered and held to be his place of residence.

Ninth. The mere intention to acquire a new residence without the fact of removal, shall avail nothing; neither shall the fact of removal without intention.

Tenth. If a person shall go into another state, and while there, exercise the right of a citizen by voting, he shall be considered and held to have lost his residence in this state.

Eleventh. No person shall be deemed to have gained a residence in any town, ward or village in this state, so as to entitle him to vote at any election therein, by remaining in such town, ward or village as a pauper, supported by the town or county in which he shall be living at the time of such election; and no person shall be deemed to have lost his residence in any town, ward or village by remaining in any other town, ward or village as such pauper.

Votes when re-
jected.

80 Wis. 544.

Final oath to
challenged
voter.

Vote rejected
on refusal to
take oath.

SECTION 38. If the person challenged shall refuse to answer fully any questions so as aforesaid put to him, the inspectors shall reject his vote. If the challenge be not withdrawn after the person offering to vote shall have answered such questions, one of the inspectors shall then tender to him the following oath or affirmation: You do solemnly swear (or affirm, as the case may be), that you are twenty-one years of age; that you are a citizen of the United States (or that you have declared your intention to become a citizen, conformably to the laws of the United States on the subject of naturalization); that you have resided in this state one year next preceding this election; that you are now a resident of this town (or ward or village, as the case may be); that you have not voted at this election, and that you have not made any bet or wager or become directly or indirectly interested in any bet or wager depending upon the result of this election, and that you are not on any other ground disqualified to vote at this election. If the person challenged shall refuse to take such oath or affirmation, his vote shall be rejected; but

if he shall then take such oath, his vote shall be received; *provided*, that the provisions of law respecting registration when applicable have been complied with by the person so offering to vote.

SECTION 39. The inspectors shall reject the vote of any person under guardianship, *non compos mentis*, or insane.

Inspectors to reject votes of insane, etc.

SECTION 40. At each adjournment of the poll, the clerks shall, in the presence of the inspectors, compare their respective poll lists, compute and set down the number of votes, and correct all mistakes that may be discovered, according to the decision of the inspectors, until such poll lists shall be made, in all respects, to correspond. The ballot-box shall then be opened and the poll lists placed therein; and such box shall then be locked, and a covering with a seal placed on the opening in the lid of such box, so as to entirely cover the same, and the key delivered to one of the inspectors, and the box to another, to be designated by the inspectors. The inspector having the key shall keep it in his own possession, and deliver it again to the inspectors at the next opening of the poll; and the inspector having the box shall carefully keep it without opening or suffering it to be opened, or the seal thereof to be broken or removed, and shall publicly deliver it to the inspectors at the next opening of the polls, when the seal shall be broken and the box opened, and the poll lists taken out and the box again locked.

Proceedings at adjournment of polls.

SECTION 41. The inspectors shall possess full authority to maintain order, and to enforce obedience to their lawful commands, during an election and during the canvass of the votes. If any person shall refuse to obey the lawful commands of the inspectors, or by disorderly conduct in their presence or hearing shall interrupt or disturb their proceedings, they may order any constable or other person to take him into custody during the election (1).

Power of inspectors to preserve order.

(1). *Form of Order or Precept.*

COUNTY OF _____, }
Town of _____. } ss.

The state of Wisconsin to any constable of the county of _____, (or, to C. D.): Whereas, at the present election in the town of _____, in said county, G. H. does refuse to obey the lawful commands of the undersigned, inspectors of the said

Canvass of
votes by inspec-
tors, and their
duties relative
thereto.

4 Wis. 420.
16 Wis. 146.
23 Wis. 430.
35 Wis. 93.

SECTION 42. As soon as the poll of the election shall be finally closed, the inspectors shall proceed immediately to canvass publicly, in the presence of all persons desiring to attend the same, the votes received at such poll, and continue without adjournment until the canvass is completed, and the statements hereinafter required are made. They shall commence by a comparison of the poll lists, and the correction of any mistakes therein, until they shall be found or made to agree. The box shall then be opened and the ballots therein taken out and counted by the inspectors, unopened, except so far as to ascertain whether each ballot is single; and if two or more ballots be found so folded together as to present the appearance of a single ballot, they shall be laid aside until the count of the ballot is completed; and if, upon a comparison of the count and the appearance of such ballots, a majority of the inspectors shall be of opinion that the ballots thus folded together were voted by one elector, they shall be destroyed (a). If the ballots in the box shall be found to exceed in number, after any such ballots folded together are destroyed, the whole number of votes on the poll lists, they shall be replaced in the box, and one of the inspectors shall publicly draw therefrom by chance, and without examination thereof, and destroy so many ballots unopened as shall be equal to such excess. The number of ballots agreeing, or so as aforesaid being made to agree, with the poll lists, the inspectors shall then proceed to open

election, the said commands being (*here set out the same*). — or, G. H., in the presence (*or, in the hearing*) of the undersigned, inspectors of said election, does, by disorderly conduct, to wit; by (loud noises, *or, by commencing an affray with divers persons, etc., as the case may be*), interrupt or disturb the proceedings of the said inspectors, in conducting such election. You are, therefore, hereby ordered forthwith to arrest the said G. H., and him safely take into custody during this election.

Given under our hands and seals, this _____ day of _____, 18—.

I. J., }
K. L., } *Inspectors of*
M. N., } *Election.*

(a) "Repetitions of the name of a candidate (in connection with the name of the office for which he is a candidate) on a single piece of paper, do not vitiate the vote; but it should be counted as a single ballot." [*State ex rel. Hawes v. Pierce*, 35 Wis. 93.]

and count and ascertain the number of votes (b.) Result to be announced.

SECTION 43. The canvass being completed, the inspectors shall then publicly announce the result thereof (1), specifying the whole number of votes cast for each office and each person to fill the same respectively, and for and against each proposition voted for at such election, and shall immediately draw up a statement in writing thereof, in duplicate, setting forth therein in words at length and in figures, the whole number of votes given for each office at such election, the names of all the persons for whom such votes were given, as shown upon the ballots, and the number of votes so given for each person, and the number of votes given for and against each proposition voted for, if any, at such election, which statements they shall certify to be correct and subscribe with their names (2).

(1) *Form of Proclamation of Result.*

Hear ye! hear ye! hear ye! The whole number of votes given for the office of —, found in the box just canvassed, was —; of which number — received —, and — —, for said office (and so on in the same manner with all the officers voted for at such election); (also give the number of votes given for and against each proposition voted on).

(2) *Form of Statement of Canvass.*

Statement of the result of a general election held in and for the town of — (or of the — ward of the city of —,) in the county of —, on the — day of November, in the year of our Lord one thousand eight hundred and —, made by the inspectors of election in and for said town (or ward), to wit:

The whole number of votes given for the office of governor was —, of which — received —, and — received — (and in like manner for each officer voted for at such election, and the number of votes given for and against each proposition voted on).

We certify that the foregoing statement is correct in all respects.

— —, }
 — —, } *Inspectors.*
 — —, }

Dated November —, 18—.

In the statement of results, the inspectors and other canvassers should not insert the word "scattering," but should return the name of each person voted for, though he may have received no more than one vote.

(b) Such as are called regular tickets are usually first separated from the irregular, scratched or altered ones; each kind placed by itself and counted, and the number received for each person for the same office set down opposite his name upon a tally sheet previously prepared, thus:

Delivery of statement and poll lists to town, city, village and county clerks.

4 Wis. 567.



Written statement of, to be made.

SECTION 44. The chairman of the inspectors, or one of them appointed by him, shall forthwith deliver to the clerk of the town, city or village, one of said statements and one of said poll lists, to be filed and preserved in his office, and shall deliver the other statement, it having been by the inspectors carefully sealed up, together with the other poll list, with the oaths of the inspectors and clerks affixed, in an envelope properly directed to the county clerk, to the chairman of the town or such one of the town supervisors as shall attend the next annual meeting of the county board, and such officer to whom the same shall be so delivered shall, within seven days after the election, deliver the same with the seals and envelope unbroken to such county clerk.



SECTION 45. If the inspectors shall determine that any ballots are so defective that the same should not be canvassed, in whole or in part, they shall make a statement in writing in duplicate, certified to be correct, and signed by them, of the contents of each of such ballots, and attach the same to the aforesaid statements of the canvass (1); and they shall carefully seal up in an envelope

FOR GOVERNOR.

Sample Tally Sheet.

Q. R.....	80		= 20.....	100
S. T.....	50		= 15.....	65
Whole number for governor				165

FOR LIEUTENANT-GOVERNOR.

U. V.....	72		= 18.....	90
W. X.....	58		= 15.....	73
Whole number for lieutenant governor				163

(1) Form of Statement of Defective Ballots.

At a general (or, special) election held at (give election district) on the — day of —, 18—, the undersigned inspectors of such election determine that the following ballots were so defective that the same should not be canvassed, in whole or in part, to wit:

(Here give the contents of each ballot, stating whether excluded wholly from the canvass, or only in part, and if the lat-

all such ballots, and deliver the same forthwith to the proper town, city or village clerk, to be preserved in his office. All other ballots shall be destroyed on completion of the canvass (a). (b).

Ballots destroyed.

CHAPTER 464, LAWS 1885.

AN ACT relating to elections, and the counting and preservation of ballots.

SECTION 1. Whenever at any election the right of any person offering to vote is challenged for any cause recognized by law, if the inspectors shall determine to receive the vote of the party challenged after the provisions of the law are complied with, such inspectors, before depositing the ticket of the party challenged in the ballot-box, shall write or cause to be written upon the back of the ticket of the voter challenged, the

Duties of persons whose vote is challenged.

ter, stating what part was canvassed and what part was not canvassed.)

We hereby certify that the foregoing statement is in all respects correct.

Dated _____.

_____,
_____,
_____, } Inspectors.

(The above must be in duplicate.)

(a) Defective ballots. See note to Sec. 42.

A ballot which contains the names of two persons for an office for which only one is to be elected, is void as to that office, and should not be counted for either of such persons; but it is good as to the candidates named thereon for other offices. [*Carpenter ex rel. v. Ely*, 4 Wis. 420; *State ex rel. Holden v. Tierney*, 23 Wis. 480.]

Ballots may be defective in various ways, as for example: If under the head "For Governor," two or more names should be written or printed, the ballot would be defective. If, under the designation of any other office, more names than there are offices of that kind to be elected, should be inserted, the ballot would be defective. If names are given without a designation of the office, the ballot is defective.

If several designations of office are united as, "For Assembly and Coroner," the names in connection with such blended designation cannot be counted, and such part of the ballot is defective. Well known and established abbreviations, by which the meaning is as clearly conveyed as though the names had been written at full length, as Wm. for William, Jno. for John, Abm. for Abraham, etc., may be counted and returned as if written in full.

Where the name is misspelled *Jacob* for *Jacob*, *Jonson* for *Johnson*, but so that the pronunciation is not varied the ballot should be counted, as if spelled aright. Where there is a change, or the omission or addition of a middle letter, to the name, the vote, if regular in other respects, should not be regarded as defective, but should be counted.

A ballot may be defective as to one or more names or designations of office upon it, and so far not counted, while the remainder may be regular and counted. The whole ballot should in such cases be attached to the statement

"Ballot good if intention of voter shown thereby, though not entirely formal" [*Spaulding v. Elwood*, 12 Wis. 551.]

Where a candidate for an office at an election is ineligible, the votes cast for him are not void, but must be counted by the canvassers, and if he receive the highest number of votes, the person receiving the next highest number will not thereby be elected. [*State ex rel. Off v. Smith*, 14 Wis. 497.]

(b) This last sentence is repealed by the provisions of Chapter 464, Laws 1885.

number of such challenged person upon the tally sheet or voting list kept at such election.

Cause all ballots cast to be securely sealed in an envelope.

SECTION 2. At every election hereafter held within this state, the inspectors of election shall cause all ballots cast by the qualified voters of any town, ward or voting precinct, in which such election has been held, after the same have been sorted and counted and the result declared and recorded, to be secured in an envelope in open meeting and properly and securely sealed; and the said inspectors shall endorse upon the envelope for what officers and in what town, ward or voting precincts the ballots were received, the date of the election and the certificates of said inspectors that all the ballots cast by the voters of such town, ward or voting precinct, and none others, are contained in said envelope. (1)

Transmit ballots.

SECTION 3. Such inspectors shall forthwith, with the other returns and in the same manner as now required by law, transmit the ballots sealed as aforesaid, in case of a town, village or municipal election, to the clerk of such town, village or municipality. In all other cases the ballots, sealed as aforesaid, shall in the same manner be transmitted to the county clerk of the county in which such election is held.

(1) COUNTY OF _____, }
TOWN OF _____, } ss. We _____, _____, _____
_____, _____, _____, the inspectors of election
for precinct No. _____, Town of _____, hereby certify that
this envelope contains all the ballots cast and received at pre-
cinct No. _____, in said town, at the election held on the _____
day of _____, A. D. 18—, and none others; and that they were
cast and received for the following named officers, viz:

.....
.....
.....
.....
.....
.....
.....

and that this envelope was sealed in open meeting this _____
day of _____, A. D. 188—.

A. B., }
C. D., } *Inspectors.*
E. F. }

SECTION 4. County, city, village and town clerks shall receive the envelopes containing the ballots cast at any election, sealed as provided in the preceding sections and shall retain them in their care until the requirements of the law, as hereinafter provided, have been fully complied with; and within three days after the time hereinafter limited, said clerk shall cause such ballots to be destroyed without examining them or permitting them to be examined by any person whatever and shall make an entry in the records of his office that such ballots have been destroyed; any clerk who examines such ballots or permits them to be examined except pursuant to the provisions of law, shall upon conviction thereof, be punished by a fine not exceeding two hundred dollars or by imprisonment in the county jail for a period not more than six months or both, in the discretion of the court.

Ballots to be destroyed.

SECTION 5. If within thirty days next following the day of any election a person who received votes for any office at any election, by himself, his agent or attorney serves upon the clerk of any county, town, city or village, a statement in writing claiming an election to such office or declaring an intention to contest the election of any other person who has received, or who may receive, a certificate of election for the same, such clerk shall retain the envelope containing the ballots thrown at any such election, sealed as provided by law until such claim is withdrawn or such election is decided by the authority competent to decide the same (1).

Contesting elections.

SECTION 6. If, within three days next following the day of any municipal or town election, ten or more qualified voters of any ward, town, village, or voting precinct, file with the city, town, or village clerk, a statement in writing, (2) that they

Relating to erroneous returns.

(1) To the town clerk, town of ———.

Take notice: That I, ———, having received votes at the election held on the ——— day of ——— A. D. 18—, for the office of ———, hereby give notice that I claim to be elected to the said office, and that I intend to contest the election of ——— who has received or who may receive a certificate of election to such office.

Dated.

(Signed.)

(2) To the town clerk of the town of ———.

Take notice: That the undersigned, ten or more qualified voters of said town (or of voting precinct No. ——— in said town), have reason to believe that the returns of said town

have reason to believe that the returns of the ward, town, village or voting precinct inspectors are erroneous, specifying wherein they deem them in error, said clerk shall forthwith transmit such statement to the inspectors, or the committee, if any, appointed to examine the returns of said election. The inspectors, or such committee, shall thereupon, and within five days (Sunday excepted), next following the day of election, and after having given two days notice (1) of the time and place of such recount, to the person or persons voted for, if within such town, village or city, open the envelope, and examine and count the ballots thrown in said ward, village, town or voting precinct and determine the questions raised; such notice shall be served in the same manner as a summons in courts of a justice of the peace; they shall then again seal the envelope, either with the seal of the city, town, or village, or a seal provided for the purpose, and endorse (2) upon

inspectors (or voting precinct No. ——. *Inspectors in said town*), for the election held for —, on the — day of —, A. D. 18—, are erroneous in this, (*here give statement of errors claimed*) and we therefore demand an examination and count of the ballots cast for such officer (or officers) (or at such election).

(Dated.)

_____,
_____,
_____.

(Signatures of voters.)

(1) STATE OF WISCONSIN, }
County of —, } ss.
Town of —.

To — and —:

You will take notice that the undersigned, pursuant to law, will at —, at the hour of — M., on the — day of —, A. D. 18—, examine and count the ballots thrown at the election held for —, in said town (or voting precinct No. —, in said town) on the — day of —, A. D. 18—, and at such time and place you can be present if you see fit.

(Dated.)

(Signed.)

_____, }
_____, } *Inspectors of elec-*
_____, } *tion for such town*
_____, } *or such precinct.*

(2) COUNTY OF —, }
Town of —. } ss.

We, the undersigned, inspectors of election of the town of — (or of voting precinct No. —, in said town of —), hereby certify, that in conformity to law, this envelope was opened and again sealed by us, and that the contents thereof remain the same as before it was by us opened.

(Dated.)

(Signed.)

_____, }
_____, } *Inspectors.*
_____, }

said envelope a certificate that the same has been opened and again sealed by them, in conformity to law, and the envelope, sealed as aforesaid, shall be returned to the proper city, town, or village clerk, who, upon the certificate of the inspectors, or of their committee, shall alter and amend such of the ward returns as have been proved to be erroneous, and such amended returns shall stand as the true returns of the ward, town, village or election precinct.

SECTION 7. If within thirty days next following the day of any election, ten or more qualified voters of any county file with the county clerk a statement in writing, that they have reason to believe that the returns of the county canvassers are erroneous, specifying wherein they deem them in error, said clerk shall forthwith convene such canvassing board, and lay such statement before them. The canvassers thereupon and within five days after such notice of contest has been so filed and after having given three days notice to all persons in the county interested in such recount, shall open the envelope and examine and recount the ballots thrown in said county, as far as the same relate to the office in dispute and determine the question raised. They shall then again enclose such ballots in said envelope and seal the same either with the seal of the county or a seal provided for the purpose and endorse upon said envelope, a certificate that the same has been opened and again sealed by them in conformity to law and the envelope sealed as aforesaid, with the ballots enclosed therein, shall be returned to the county clerk, who, upon the certificate of the canvassers, shall alter and amend such of the county returns as have been proved to be erroneous, and such amended returns shall stand as the true returns of the county.

Further duties
of clerk regard-
ing erroneous
returns.

SECTION 8. Whenever it shall appear to the supreme court or any circuit court of this state, upon petition duly verified and filed within thirty days after any election, that any of the ballots cast at any county, town, city or village election were illegally cast or counted, such court may, upon an order to show cause directed to the party claiming the election, require such party to appear and answer the petition of the contestant, and upon issue joined, the court shall proceed to hear,

Regarding il-
legal votes cast.

try and determine the same according to the usual practice of the courts, and by its judgment may fully determine the rights of the parties, or may order a recount of the ballots cast at any election and direct that the ballots shown to be illegal may be excluded from such recount. Such recount to be made by the proper inspectors or canvassers, and amended returns thereof made in due form. Any party interested may appeal from a judgment of the court as in other actions, but no appeal shall stay an order made for a recount of the ballots cast at any such election. Nothing herein contained shall be construed to modify or abolish any of the remedies which now exist at law or in equity in cases herein described.

Penalty for violating provisions of this section.

SECTION 9. At the canvass of the votes cast at any election, the inspectors shall not, neither shall they permit any one to examine the back of any ballot but the face thereof only. No person during the canvass of the votes cast at any election, shall expose or examine the back of any ballot or the writing thereon. Any person violating the provisions of this section shall be punished by a fine not exceeding two hundred dollars or imprisonment not exceeding sixty days, or by both fine and imprisonment in the discretion of the court.

Form of ballots to be used.

SECTION 10. No person shall print any ballot for use at any election, or shall distribute, or circulate at any such election, any printed ballot unless such ballots are printed on plain, white, ordinary printing paper and unless the same are printed with black ink on one side of the paper only, and containing no printing, engraving, device or mark of any kind upon the back thereof. Any person violating the provisions of this section shall be punished by a fine not exceeding one hundred dollars, or imprisonment not exceeding sixty days.

Secretary of state to provide self sealing envelopes.

SECTION 11. The secretary of state shall provide a sufficient number of self-sealing envelopes to supply all the polls in this state for the use of the inspectors in preserving and returning the ballots as herein provided. Such envelopes shall be distributed by such secretary in the same manner as blanks are now distributed by him for use at a general election.

SECTION 12. The word inspectors as used in thi

act shall be construed to include all city, village and town officers or boards receiving ballots and in charge of the polls at any election. The word inspector defined.

SECTION 13. This act shall take effect and be in force from and after the first day of July, A. D. 1886.

Approved April 11, 1885.

COUNTY CANVASS.

SECTION 46. (As amended by Ch. 272, L. 1885.) 36 Wis. 498.
On the Tuesday next succeeding the election, or at any time sooner, if all the returns are sooner received, the county clerk shall take to his assistance from among the following named officers of the county, to wit: The county judge, register of deeds, members of the county board of supervisors and justices of the peace, two associate canvassers, one of whom shall not be of the same political party as such clerk, and who shall constitute with such clerk a board of county canvassers, and in case all the above named officers should belong (to) the same political party, then said clerk shall elect from the opposite political party some reputable citizen and elector to act as the third member of said board. In case of vacancy in the office of county clerk, or when from absence, sickness or other inability, such clerk cannot perform the duties enjoined in this chapter, the clerk of the circuit court, or if there be no such clerk, or he be unable to perform such duties, then the chairman of the county board shall perform the duties in this chapter required of the county clerk, and be subject to the same punishment for violation thereof (a).

SECTION 47. If, on the day appointed for the county canvass, there shall fail to be an attendance of three canvassers, the clerk shall procure a full attendance of such canvassers, and may therefor adjourn the canvass one day, when the canvass shall proceed. On the assembling of the board of county canvassers, they shall open and Vacancies in board of canvassers, how filled.

(a) The county canvassers cannot rightfully do any act not enjoined on them by the statute. They are required to make and certify only one statement of votes given for state officers, to be sent to the state canvassers, and when that is done their duty is discharged, and their authority ceases. Additional or supplementary returns made afterwards are unauthorized and cannot legally be considered by the state canvassers. [*Bashford ex rel. v. Barstow*, 4 Wis., 567.]

Canvass, how conducted and messenger for absent returns.

36 Wis. 498.

38 Wis. 71.

39 Wis. 608.

Defective returns to be perfected.

Duty of messenger.

Board may adjourn for completion of returns.

Statement of county canvass, how made, certified, attested, filed and recorded.

examine the returns, and if from any town, ward, election district or poll of the county, no returns shall have been received, they shall forthwith dispatch a messenger therefore, and the person having them in charge shall deliver such returns to said messenger; and if, on examination of any returns received, they shall be found so informal or incomplete that the board cannot intelligently canvass them they shall dispatch a messenger with such returns to the inspectors who made them, with a written specification of the informalities or defects, and command them to forthwith complete the same in the manner required by law, and deliver them to said messenger, which such inspectors shall do. Every such messenger shall safely keep all such returns, exhibit them to no person except the inspectors, and deliver the same to the county clerk, with all convenient dispatch(1). For such purposes, the board may adjourn as may be necessary, not more than four days at one time, nor more than eight days in all.

SECTION 48. The returns having been obtained as hereinbefore provided, the board shall proceed thereupon to make out a separate statement, written out in words at length, containing the whole number of votes given in such county for each state officer voted for, and for representative in congress, the names as returned of all the persons to whom such votes were given and the number of votes given to each; another similar statement of the votes given for electors of president and vice-president; another, of the votes given for senator, when the county alone does not constitute a senate district; another, of the votes given for

(1) *Form of notice by County Canvassers of defects in returns, and mandate to correct them.*

To the Inspectors of Election of ———:

The undersigned board of county canvassers of the county of ———, having found the election returns made by you so informal or incomplete that the board cannot intelligently canvass them, herewith hand them to you by ——— our messenger. The said returns are informal and (or) defective in the following particulars (*specify informalities or defects*).

And we hereby command you to forthwith complete the same in the manner required by law, and deliver them to said messenger.

— — —, } Board of County
— — —, } Canvassers.
— — —, }

Dated ———.

members of assembly, when the county alone does not constitute an assembly district; another, of the votes given for county officers; and another, of the votes given for senators and members of assembly, when the county constitutes one or more senate or assembly districts, specifying the number of votes for each person for senator and member of assembly, in each such district respectively. They shall append to each such statement, as part thereof, a succinct tabular exhibit in figures, of the votes cast at each election poll in the county, for each office and person entering into the canvass embraced in such statement, whether canvassed or not, and if any votes were rejected, specifying the reasons therefor. Each statement shall be certified as correct, and attested by the signatures of the said canvassers, and filed in the office of the county clerk, and the same shall be recorded therein (a).

SECTION 49. They shall then determine the persons who have been, by the greatest number of votes, elected to the several county offices and members of the senate and assembly, when the county constitutes one or more senate or assembly districts; and such determination shall be reduced to writing, certified as correct, and attested by their signatures, and be annexed to the statement of votes given for such officers respectively, and filed and recorded with the same (1). Such state-

Determination of county canvassers, how made, attested, filed, recorded and published.

(a) This section is substantially the same as the law prior to the revision of 1878, except that under it it is the duty of the county canvassers "to append to each such statement, as part thereof, a succinct tabular exhibit in figures, of the votes cast at each election poll in the county, for each office and person entering into the canvass, embraced in such statement, whether canvassed or not, and if any votes were rejected, specifying the reasons therefor." (See "Revisers' Notes," § 48, p. 12. The law makes this tabular exhibit a part of the statement, and no statement will be sufficient without it. (The secretary of state is required by Sec. 77 to furnish blanks, and as the forms are necessarily voluminous, they are omitted here.)

(1) *Form of Certificate of Determination of Persons Elected.*

STATE OF WISCONSIN, } ss.
County of _____.

We, _____ county clerk and _____ and _____, in and for said county, constituting the board of county canvassers for said county, do hereby certify that we have determined that the within named _____ is duly elected to the office of _____, and that _____ is duly elected to the office of _____ (continuing according to the facts)

Given under our hands at the office of the county clerk at _____, this _____ day of, 18—.

County Clerk.

Board of County Canvassers.

ment and determination shall be published in such newspapers of the county as the canvassers may designate, to be paid for by the county.

County clerk to issue certificates of elections.

4 Wis. 420.
5 Wis. 300.
12 Wis. 122, 497.
23 Wis. 430.
29 Wis. 608.

SECTION 50. The county clerk shall immediately make out, in pursuance of the determination of such board of canvassers, a certificate (1) of election for each person having the greatest number of votes, for any county office, or for member of the senate or assembly, when the county constitutes one or more senate or assembly districts, and deliver the same to such person, upon his making application therefor.

When duplicate returns of senators and assembly men to be made, etc.

SECTION 51. The said board shall without delay make duplicates of the statement of the votes given for senator, when the county alone does not constitute a senate district, and deliver the same to the county clerk, who shall deliver it to the senatorial district canvassers; said board shall also make a duplicate of the statement of the votes given for member of assembly, when the county alone does not constitute an assembly district, and deliver the same to the said clerk, who shall deliver it to the assembly district canvassers.

County clerk to make and deliver copies of canvass for state officers, etc.

SECTION 52. Of the statement and certificate of votes given for each state officer, and for representative in congress, and also of the statement and certificate of votes given for electors of president and vice-president, the county clerk shall forthwith make three copies, certified under his hand and the seal of the county board, and send by mail one such copy of each to the governor, one to the secretary of state, and one to the state treasurer. He shall also transmit by mail to the secretary of state, within thirty days after any general election, a list of the names of persons

To furnish secretary of state with names of senators, assembly men and county officers.

(1) *Form of Certificate of Election.*

STATE OF WISCONSIN, } ss.
County of ———.

I, ———, county clerk of said county, do hereby certify, that at the general election held in the several towns (and wards, *if there is a city in the county*), in said county on the ——— day of November, 18—, A. B. was by the greatest number of votes, elected a state senator (or member of assembly, or sheriff, or any other officer, as the case may be), for said county of ———.

Given under my hand and official seal at ———, this ——— day of ———, 18—.

[OFFICIAL SEAL]

———, County Clerk.

SECTION 53. Whenever any amendment shall have been proposed to the constitution of this state and agreed to and submitted to the people, pursuant to the constitution, or whenever any other question or proposition shall be submitted by the legislature to a vote of the people, if the vote thereon shall be required to be taken at the general election, the votes for and against such amendment, question or proposition so submitted, shall be taken, canvassed, certified and recorded, and certified copies of the statements thereof shall be made and transmitted by the county clerks of the several counties to the governor, secretary of state and treasurer, at the same time and in the same manner as the votes for state officers are by law to be taken, canvassed, certified and recorded, and statements thereof are to be certified and transmitted.

Votes on constitutional amendments, etc., how taken, canvassed, etc.

SECTION 54. In each senate and assembly district, the limits of which shall be greater than those of a county, or which may embrace por-

**Canvass for
senators and
a-sembly men,
how made
when district**

Statement of the members of the legislature and county officers elected in the county of _____, state of Wisconsin, at the general election held on Tuesday next succeeding the first Monday, being the _____ day of November, A. D. 18—.

Member of assembly, _____ district, _____.

Sheriff, — — .
Treasurer, — — .

STATE OF WISCONSIN, }
County of _____. } ss.

Given under my hand and official seal at _____, this _____ day of _____, 18—.

— —, *County Clerk.*

embraces parts
of two counties,
etc.

tions of two or more counties, there shall be a board of district canvassers, and the county clerks of the several counties whereof a portion of the whole is within the district, and the chairman of the county board of the county where the meetings of the board are to be held, shall constitute such board. Any three of such canvassers shall be a quorum for the transaction of the business of said board; and in case there shall not be three of the members of such board present at any such meeting, the county judge or register of deeds of the county where any such meeting is to be held, or both of them, may act as members of such board, so as to constitute a board of not less than three in number.

Canvassers
when and
where to meet.

SECTION 55. The board shall meet in each such assembly district on the second Tuesday, and in each such senate district on the third Tuesday, next after the day on which the county canvass is required to be made, at the office of the county clerk of the county containing the most populous portion of such senate or assembly district, according to the last preceding census.

If county clerk
cannot attend,
to furnish du-
plicate state-
ment.

SECTION 56. If any one of the county clerks shall be unable to attend such canvass on the day appointed therefor, he shall, on or before that day, cause to be delivered, at the office of the county clerk of the county in which such meeting is to be held, the duplicate statement of votes given in his county for the officers to be elected in such district, which statement shall be laid before said board. If, on the assembling of the board, any such duplicate statement shall not be present, or if, on examination of any such statement received, it shall appear that any material mistake has occurred therein, or that the vote of any poll or any part thereof, in such district, has not been counted by the county canvassers, the board shall dispatch a messenger to obtain such absent statement, or with a requirement in writing to the county clerk of the county from which such erroneous statement was received, to certify the facts in respect to such supposed mistake, or the reasons why the vote of such poll was not counted; and the person having such absent statement shall deliver the same to such messenger, and the county clerk to whom any such requirement is delivered, shall forthwith make true and full answer to the

How statement
may be pro-
cured and cor-
rected.

same, under his hand and the seal of the county board, and deliver the same to such messenger. For such purpose the board may adjourn as may be necessary, not more than one week in all.

Adjournments
for that pur-
pose.

SECTION 57. So soon as they shall have the completed statement of such district, as hereinbefore provided, the board shall make a canvass of the same, and draw up a statement thereof in words at length, which shall contain the whole number of votes given, the names of all the candidates, and the whole number of votes given to each, and the determination of the board what person has been elected in such district, as appears from such statements and returns to them, which statement shall be certified to be correct, over the signatures of such canvassers, and be forthwith delivered to the county clerk of the county in which their meeting shall be held, who shall file and record the same in his office. Such clerk shall forthwith transmit, by mail, to the secretary of state, the name of the person so elected, and make out and transmit to him a certificate of his election(1).

Canvass how
made, certified,
etc.

Names of per-
sons elected, to
be transmitted
to secretary of
state.

MISCELLANEOUS PROVISIONS.

SECTION 74. During the day on which any general, special, town or charter election shall be held, no civil process shall be served on any elector entitled to vote at such election.

Process not to
be served on
election day.

SECTION 75. In all elections for the choice of any

- (1) *Form of Certificates of Election of Members of Senate or Assembly, where District is composed of more than one County.*

STATE OF WISCONSIN.

Senate district (or assembly district), compris- } ss.
ing the counties of —, —, —.

I, —, county clerk of — county, do hereby certify that, at the general election held on the — day of November, 18—, in the several towns, ward and election districts in the above named counties, constituting the said senate (or assembly) district, A. B. was by the great-est number of votes duly elected senator (or member of assembly) for said district, as appears from the certified statement of the board of district canvassers, on file in my office.

Given under my hand and official seal at —, this — day of —, 18—.

[OFFICIAL SEAL.]

—, County Clerk.

NOTE.—The sections from 58 to 73, both inclusive, relate entirely to the "state canvass," and are therefore omitted.

Plurality to elect.

4 Wis. 430
61 Wis. 417.

Informality not to defeat will of plurality.

Compensation to inspectors, etc.

Secretary to furnish necessary blanks.

Distribution.

officers, unless it is otherwise expressly provided, the person having the highest number of votes for any office shall be deemed to have been duly elected to that office; and whenever it shall satisfactorily appear that any person has received a plurality of the legal votes cast at any election, for any office, the canvassers shall give to such person a certificate of election, notwithstanding the provisions of law may not have been fully complied with in noticing or conducting the election, or canvassing or returning the votes, so that the real will of the plurality may not be defeated by any informality.

SECTION 76. A reasonable compensation shall be paid to inspectors and clerks of registry and election, county canvassers, district canvassers, and messengers employed and performing duties under the provisions of this title, to be fixed by the town board, village board, common council, or county board, and paid from the treasury of the town, village, city or county by whom employed. The messenger of the canvassing board of a senate or assembly district shall be paid by the county to which he shall be sent. Every messenger sent by the governor, secretary of state, or state board of canvassers, shall be paid out of the state treasury a reasonable compensation, to be fixed by the secretary of state.

SECTION 77. The secretary of state shall make out all necessary blanks, returns and statements to carry out the provisions of law, for making the canvass, returns and statements of all elections, general, special and judicial, and for making the registers required by law, and for applications for registry in writing, and affidavits of non-registered voters, and freeholders corroborating the same, referred to in section twenty-four of these statutes. Such blanks shall contain the necessary oaths and certificates of the inspectors, clerks of election and canvassers, and he shall place notes to the same, explanatory of their use and referring to the statutes, and cause the same to be distributed to the county clerks of the several counties on or before the first day of August in each year.

SECTION 78. Such blanks shall be distributed to the several town, city or village clerks in each county by the sheriffs, at the time notices for the

general elections are served upon them, without additional fees or charges therefor. Such clerks shall furnish the inspectors of elections, in their respective towns, wards and villages with such registry blanks at or before the time fixed for the first meeting for registry, and the other blanks before the opening of the poll on the day of election, and such clerks and inspectors shall use such blanks, when furnished; but no election nor election returns shall be invalidated in consequence of the failure to use such blanks.

OF ELECTIONS TO FILL VACANCIES.

(Chapter VI, R. S. 1878.)

SECTION 79. All vacancies in the office of representative in congress, senator or member of assembly, or in any state or county office (except governor and lieutenant-governor,) may be filled at a general or special election, or by appointment in the cases provided by law, when any such vacancy shall occur within four months, and if in a state office or in that of state senator or representative in congress, more than twenty days, or if in a county office, more than ten days before the general election; and when occurring earlier than said four months, if it shall not have been supplied by special election, the same (except in the office of the clerk of the circuit court) shall be filled at the general election next succeeding the happening thereof. When a vacancy shall occur in any such office, except representative in congress, within six months next before the end of the term, no election shall be held, but the same shall be filled by appointment, or otherwise, as provided by law.

Vacancies how
filled
29 Wis. 608.

SECTION 80. If a vacancy shall exist in the office of state senator or representative in congress, or in any state office which by law should be supplied at the ensuing general election, the secretary of state shall, twenty days at least before such election, give notice, in writing, to the sheriff of each county in the state, when the vacancy is in a state office, or in case of such vacancy in a district, then to the sheriff of each county therein, specifying the cause of such vacancy, the name of the officer in whose office it

Notice of election to be given by secretary to sheriffs.
20 Wis. 235.
22 Wis. 363.

occurred, and the time when his term of office will expire. Upon receipt thereof, the sheriff shall give notice in the manner provided for notices of general elections; and, if a vacancy shall exist in any county office which by law should be supplied at the ensuing general election, the sheriff of such county, or, if the vacancy exist in that office, the county clerk shall give notice thereof ten days before election, specifying the cause of such vacancy, the name of the officer in whose office it occurred, and the time when the term of such office will expire; such notice shall be given in the manner provided for notices of general elections.

Special elections, in what cases held.

29 Wis. 608.

SECTION 81. Special elections may be held in the following cases:

1. When there shall have been neglect or failure to choose at a general election a representative in congress, senator, member of assembly, or any county officer who, by law should have been chosen at such general election.

2. When the right of office of a person elected to either of the offices last aforesaid shall cease before the commencement of the term of office for which he shall have been elected; but no such special election for sheriff, district attorney, register of deeds, clerk of the circuit court, or coroner, shall be held after the next ensuing first Monday of January.

3. When a vacancy shall occur in the office of member of assembly before the first day of February, and in the office of a senator before the first day of February, in the second year, and too late to have been filled at the previous general election, or when a special session shall be called after a vacancy occurring in either.

4. If a vacancy, which by law might have been filled at the next general election thereafter, shall not have been filled, a special election therefor shall then be held, except in case of county officers.

5. When in any other case a vacancy not provided for in this section, the governor in his discretion, shall direct.

Special elections for county officers, how ordered.

SECTION 82. All special elections for county officers shall be ordered by the sheriff, which order shall be countersigned by the county clerk and filed in his office, except that a special election

for sheriff shall be ordered and noticed by the county clerk in the manner required of the sheriff in other cases. All other special elections shall be ordered by the governor. Every such order shall specify the office to be filled, how the vacancy occurred, the name of the officer in whose office it occurred, the time when his term of office will expire, the county or district in which, and the day on which such election shall be held, which day shall not be less than ten nor more than forty days from the date of such order. When made by the governor, such order shall be filed and recorded in the office of the secretary of state.

Other special elections, how ordered.

SECTION 83. The secretary of state shall cause a copy of each notice of election issued by him, and of each order made by the governor for a special election to be published in the official state paper, once in each week, from the date of such notice or order, until the election to which it shall refer; and, on receipt of such order, shall cause a copy thereof forthwith to be delivered to the sheriff of the county, or in case of a vacancy in a district embracing more than one county, then to the sheriff of each county, any part of which is in such district. The sheriff, on receiving or on making any order for a special election, shall forthwith give notice of such election in the manner provided for giving notices of general elections. Every town, village and ward officer who shall receive any notice of a special election, as herein provided, shall forthwith give notice thereof in the manner required of him in case of a general election (a).

Secretary to publish notices and orders for special elections.

Sheriffs to give notice of elections.

Town, village and ward officers to give notice.

SECTION 84. Special elections shall be held at the place, and conducted by the officers, and the result thereof canvassed in the same manner and within the same number of days thereafter certified, in all respects as near as practicable, as provided for general elections; and no special election shall be held within sixty days next preceding a general election.

Special elections, where held; how conducted.

SECTION 85. This chapter does not relate to the filling of vacancies in judicial offices.

Judicial officers not embraced.

(a) See forms under secs. 18 and 19.

OF THE ELECTION OF JUSTICES OF THE SUPREME COURT, CIRCUIT AND COUNTY JUDGES.

Elections for
judicial offi-
cers, when
held, how no-
tified.

SECTION 86. All elections for justices of the supreme court, and for circuit and county judges, shall be held on the first Tuesday in April. The secretary of state shall give at least twenty days notice of all judicial elections; and if the election is for a county judge, the notice shall be given in the county in which the judge is to be elected; if for a circuit judge, in the circuit in which he is to be elected; and if for a justice of the supreme court, in the state at large.

Elections to be
held on the
first Tuesday
in April.

SECTION 87. In all cases where the term of office of such justice or judge is about to expire, the election for such justice or judge shall be held on the first Tuesday of April, next prior to the time of the expiration of such term of office as fixed by law; and, in case no such election is held at the time above specified, then, except in the case of a county judge, such election shall be held on the first Tuesday of April next thereafter, or on some subsequent first Tuesday in April after the expiration of such term of office.

Elections to
fill vacancies,
when held.

14 Wis. 163.

SECTION 88. In all cases of vacancy in the office of justice of the supreme court, or circuit judge, the election to fill such vacancy shall be held on the first Tuesday of April next after the vacancy shall happen, in case such vacancy shall happen twenty days before such first Tuesday of April; and if no election shall then be held for such purpose, or if the vacancy shall happen within twenty days next before the first Tuesday of April next after such vacancy, then the election shall be held on the first Tuesday of April next thereafter.

How judicial
elections noti-
fied, conducted,
canvassed, etc.

SECTION 89. Elections for justices of the supreme court, circuit and county judges, shall be notified, held and conducted, and the results canvassed and returned in the same manner as at general elections. All votes given for any such officer shall be put in a ballot-box separate from that used for any other election on the same day. Within a like time as prescribed for the county canvass, after a general election, a board of county canvassers shall be convened, who shall canvass

the statements received from the several polls in the county, and make a statement thereof, and return the same, including the votes for the office of county judge, as at a general election, and they shall determine who is elected to the office of county judge, and the county clerk shall give him a certificate thereof. The board of state canvassers shall be convened on or before the fifteenth day of May to canvass the statements of votes received for justice of the supreme court or circuit judge, in like manner, and shall have the powers, and perform the duties in relation thereto, so far as applicable, as prescribed in respect to the canvass for state officers; and all the provisions of chapter 5, of these statutes respecting the qualifications of voters, the conduct of all elections and the canvass and return of votes, shall be applicable to such election.

When state
canvassers to
meet.

* * * * *

SECTION 4543. Any person who shall vote at any general or special election, town meeting or election, school meeting or election, city, village or charter election, knowing that he has not the requisite qualifications and residence as a legal voter, or that he is not entitled to vote by reason of disfranchisement or other disqualification, at the time and place of such election, or who shall cause or procure his registration by any board of registry, as a legal voter, in any election district, knowing that he has not at the time the requisite qualifications and residence of a legal voter, in such district, or who shall willfully make any false statement not under oath to the inspectors of any election, or to any board of registry, when offering to vote, or to be registered as a voter in any election district, in respect to his qualifications or residence as a voter in such district, or who shall cause or procure his name to be registered as a voter, in more than one election district, for one and the same election, or who shall falsely personate another person registered as a voter in any election district, or who shall vote more than once at the same election, or who shall procure, aid, assist, counsel or advise another to do any act hereinbefore specified, shall be punished by imprisonment in the state prison not more than three years nor less than one year,

Penalty for illegal voting or registering, or making false statement to secure registration, etc.

or in the county jail not more than one year, or by fine not exceeding two hundred dollars.

Penalty on canvassers for false statement or supplemental returns, etc.

SECTION 4544. Any member of the board of canvassers of votes cast at any election, who shall knowingly make or assist in making any untrue or false statement or canvass of such votes, or any false certificate thereof, or who shall willfully alter or destroy any statement or canvass of such votes or certificate thereof truly made after the same is made, or any return, statement, canvass or certificate of such votes, made to such board of canvassers, or any member of the state board of canvassers of votes cast at any election, who shall make or assist in making any canvass or statement of such votes, or sign or make or assist in making any certificate of the correctness thereof, which shall include or contain any votes, or statement or return of votes, in the form of additional or supplemental returns, or who shall count, canvass or consider any such additional or supplemental returns, in determining the result of any election, shall be punished by imprisonment in the state prison, not more than three years, nor less than one year, or in the county jail not more than one year, or by fine not exceeding five hundred dollars.

Penalty of inspector of elections for sundry violations of duty.

13 Wis. 519.

SECTION 4545. Any inspector of elections, who shall, after the polls are open to receive votes, put into any ballot-box any vote, other than his own, or the vote of another lawfully received, or who shall receive or consent to the reception of the vote of any person, knowing that such person has not the requisite qualifications and residence of a legal voter, or of any person who shall refuse to make the oath or affirmation required by law, or to answer any proper question put to him in respect to his qualification or residence as a voter, or who shall refuse or willfully neglect or sanction the refusal or willful neglect of another inspector, to put such proper questions or administer such oath or affirmation to any person offering to vote; or any member of a board of registry, who shall register the name of any person as a legal voter in any election district or consent to such registration, knowing that such person has not the requisite qualifications and residence of a legal voter in such district, or when such person shall have refused to take the oath or affirmation required by

W. Buchanan

law, or to answer the questions put to him, in respect to his qualifications and residence as a voter in such district, or who shall refuse or willfully neglect to put such questions or administer such oath or affirmation to such person; or any inspector or clerk of elections, who shall knowingly make, assist in making, or cause to be made, any false statement or return of the votes cast at any election, or who shall willfully alter or destroy any registration list, poll book or return of said votes, or who shall refuse or willfully neglect to make any statement, canvass, certificate or return of said votes, as required by law; or any inspector, member of any board of registry, member of any board of canvassers, or any officer or other person, from whom any duty or service is required by law, in respect to any election, who shall refuse or willfully neglect to perform such duty or render such service, or who shall willfully violate any provision of law, or be guilty of any fraud in respect to any election, shall be punished by imprisonment in the state prison not more than three years nor less than one year, or in the county jail not more than one year, or by fine not exceeding five hundred dollars.

SECTION 4546. Any person who shall furnish an elector who cannot read, with a ticket, informing him that it contains a name or names different from those which are written or printed thereon, with intent to induce him to vote contrary to his inclination, or who shall fraudulently or deceitfully change a ballot of any elector, by which such elector shall be prevented from voting for such candidate or candidates as he intended, or who shall fraudulently put any ballot or ticket into the ballot-box, shall be punished by imprisonment in the state prison not more than three years nor less than one year, or by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars.

Penalty for deceiving ignorant elector.

SECTION 4547. Any officer or other person who shall call out or order any of the militia of this state, to appear or exercise on any day during which any election shall be held pursuant to law, in any town or ward where such election is to be so held, or within two days previously thereto, except in cases of invasion, insurrection or riot,

Penalty for ordering military out on election day.

shall be punished by fine not exceeding five hundred dollars.

Penalty for
frauds on the
ballot box;
breaking open
same, etc.

SECTION 4548. Any person not authorized by law, who shall, during the progress of any election in this state, or after the closing of the polls and before the ballots are counted and the result ascertained, break, open or violate the seals or locks of any ballot-box in which ballots have been deposited, at such election, or who shall obtain unlawful possession of such ballot-box containing such ballots or shall conceal, withhold or destroy the same, or who shall willfully, fraudulently or forcibly add to, or diminish the number of ballots legally deposited in said ballot-box, or any person who shall aid or abet in so doing, shall be punished by imprisonment in the state prison not more than three years nor less than one year, or by fine not exceeding three thousand dollars, nor less than one thousand dollars.

BRIBERY AT ELECTIONS, ETC.

* * * * *

Penalty for
bribing an elec-
tor.

SECTION 4478. Any person who shall, directly or indirectly, or in any manner whatsoever, give or promise to give to any elector, or to any person on his behalf or for his use, any money or thing of value, for the purpose of influencing such elector to vote for any particular person, object or ticket, or in any particular way, at any election authorized by law, or who shall by bribery in any way, or by menace or threat in any way, directly or indirectly, induce or influence, or attempt thereby to induce or influence any elector to vote for any particular person, object or ticket, or in any particular way, at any such election, and any such elector who shall ask, solicit or receive from any person any money or thing of value, or any pecuniary advantage or benefit, in consideration of his vote for any particular person, object or ticket at any such election, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars.

Penalty for
elector receiv-
ing a bribe.

Penalty for
buying a vote
in a convention
to nominate
candidates.

SECTION 4479. Any person being, or seeking to be, a candidate for any office at any election authorized by law, who shall give or promise to give to any elector, or other person, any money or thing of value, or any pecuniary advantage or

benefit, for the purpose of inducing or influencing such elector or other person to vote for him in any convention or meeting of the people, held for the purpose of nominating any person or persons, to be voted for at any such election, to make him the nominee of any such convention or meeting, and the candidate to be voted for, for any office, at such election, and any such elector, or other person, who shall ask, solicit or receive any money or thing of value, or any pecuniary advantage or benefit, from such candidate, as a consideration or inducement for his vote, at any such convention or meeting of the people, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars.

Same for selling vote.

SECTION 4480. Any person who shall by bribery, menace, threat or intimidation, induce, compel or influence any elector to vote for any particular person, object or ticket, at any election authorized by law, or at any convention or meeting of the people, held for the purpose of nominating any person or persons to be voted for at any such election, or attempt so to do, or by any or all such means, shall deter or prevent such elector from voting at such election or convention or meeting of the people, or obstruct such elector in so voting, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars.

Penalty for influencing an elector by bribery, threats, etc.

SECTION 4480 a (Chapter 174, laws 1885). Any person who prevents, hinders, controls or intimidates another from exercising, or in exercising the right of suffrage by means of threats or depriving such person of employment or occupation, or by threats of refusing to renew contracts for labor, at any election in this state, shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding five hundred dollars.

Offences against public justice.

SECTION 4481. Any person who shall obtain any office by bribery, or shall have been elected to any office, at any election, at which election he shall have induced or procured any elector to vote for him for such office by bribery, shall be disqualified from holding said office, and he shall be ousted therefrom, and said office shall be deemed and held vacant, to be filled by election or

Office obtained by bribery, deemed vacant.

appointment, as other vacancies, according to law (a).

CIVILIZED DESCENDANTS OF CHIPPEWAS OF LAKE SUPERIOR MAY VOTE.

(Chapter 84, Laws 1879.)

Conditions upon which Indians may become voters.

SECTION 1. Any civilized person being a descendant of the Chippewas of Lake Superior, residing within this state and not upon any Indian reservation, who shall make and subscribe to an oath, before the clerk of the circuit court or his deputy, of the county where such person resides, that he is not a member of any Indian tribe, and has no claim upon the United States for aid and assistance from any appropriation made by congress for the benefit of Indians, and that he thereby relinquishes all tribal relations and right to claim or receive any aid from the United States which he may have; such oath, when so taken and filed and recorded as hereinafter provided, shall be presumptive evidence that such person is not a member of any Indian tribe and of his right to vote at all elections held in this state, when otherwise qualified.

Oath to be filed.

SECTION 2. The oath taken according to the provisions of section one of this act shall be filed in the office of the clerk of the circuit court before whom the same shall have been taken, and shall be recorded by such clerk in a book to be provided for that purpose, upon the person making such oath paying to said clerk the sum of one dollar.

(a) Votes cast in favor of a candidate for public office, in consideration of his promise in case he should be elected, to donate a sum of money or other valuable thing to a third party, whether such party be an individual, a county, or any other corporation, are void; as where A. publicly proposed and offered that, if elected county judge he would furnish office and serve for six hundred dollars a year, when the salary of such office, fixed by authority of law, was one thousand dollars, votes given for A., in consideration of such promise, held void. *State ex rel. Newell v. Purdy*, 36 Wis., 213.

OF THE TRUST FUNDS.

THE DRAINAGE FUND AND ITS DISTRIBUTION.

(Chap. XVII, R. S. 1878).

SECTION 254. R. S. (As amended by Ch. 264, L. 1883.) All the moneys belonging to the drainage fund paid into the treasury, shall, under the direction of said commissioners, on the thirtieth day of September, in every year, or as soon thereafter as the accounts can be made up, be paid to the county treasurers of the respective counties entitled to the same; and the said commissioners shall at the same time make out a statement under their hands, of all swamp lands sold by them in trust for the counties respectively, setting forth the description of such lands in each county separately, the price of each tract, and the total amount received for all such sales in each county separately, and shall also include therein the amount of other moneys received on account of the drainage fund for each such county specifying the sources from which such moneys are received, and such other facts as shall be necessary to enable the county clerk to apportion the same to the several towns of his county according to law. They shall forthwith file such statement and shall forthwith transmit to the county clerk of each county entitled to any such money, a copy thereof, relating to such county.

1: Wis. 448;
31 Wis. 257.
46 Wis. 214.

SECTION 255. On receiving such statement, every county clerk shall apportion in writing the drainage moneys to the several towns of his county, as follows:

Apportionment
of drainage
moneys.

31 Wis. 257.
46 Wis. 255.

1. To each town all the moneys, both principal and interest, which have been received during the previous year on account of lands situated in such town.

2. All other drainage moneys among the several towns, according to the number of acres of swamp lands situated in each. He shall file such apportionment in his office, and transmit to the county treasurer a copy thereof, who shall file the same in his office. The county clerk shall also at the same time transmit to the clerk of each town a copy of that portion of the statement of the said commissioners which relates to land lying in such town.

County treasurer to notify town treasurer of apportionment.

And pay same on demand.

Money paid to be under control of town boards.

33 Wis. 323.

Town boards may lease swamp lands.

SECTION 256. Each county treasurer, immediately upon receiving such apportionment from the county clerk, shall notify the town treasurer of each town named therein that the drainage fund has been so apportioned to such town, and shall on demand pay the same to such treasurer and take his receipt therefor. Said moneys shall constitute the drainage fund of said town, shall be under the control of the town board, and shall be expended in draining and reclaiming the swamp lands of such town, and in constructing roads and bridges over such swamp lands, and when not necessary for these purposes, in the support of common schools in such town, but for no other purpose. Said fund shall be paid out upon orders in the manner provided by law for the payment of other town moneys.

SECTION 257. The town board of supervisors in any town may lease (1) for the purpose of cutting grass or picking cranberries therefrom, for the term of one year, but subject to termination on sale thereof, any swamp lands in such town on which marsh hay may be cut or cranberries picked, for such cash price as they may determine; but it shall not be lawful to cut any timber or do any waste thereon (a). All moneys received

(1) *Form of Lease.*

This indenture, made the — day of —, 18—, by and between the town board of the town of —, in the county of —, of the one part, and L. M., of said town, of the other part, witnesseth: That the said town board, in consideration of the cash price of fifty dollars, by them fixed and determined

(a) All sheriffs and town officers are specially charged to immediately communicate to the district attorney any and all information received by them respecting the commission of any trespass or waste on any public lands, and to enter complaint against the offender before some justice of the peace. [Section 243, R. S.]

Town clerk required to keep in his office a list and description of swamp lands in the town, for the inspection of the public. [Section 251, R. S.]

on any such leases shall be added to the drainage fund of the town. * * * * *

Rent to go to
drainage fund.

INVESTMENT OF THE TRUST FUNDS.

* * * * *

SECTION 263. All the taxable property in any school-district, which has heretofore obtained, or shall hereafter obtain any loan from the state, shall stand charged for the payment of the principal and interest thereof; and the boundaries of such district shall not be so altered as to exclude therefrom any land included therein at the time of making such loan, until such loan shall be fully paid, without the consent of said commissioners, and upon such terms as they shall prescribe; and there shall be annually levied, upon the taxable property of such district, besides all other taxes, a tax sufficient to pay the annual interest, and annual installments of principal, of such loan, as hereinafter provided. Whenever a joint school-district shall make any such loan, the clerk of such district shall notify in writing, the town clerks of

Taxable property in districts chargeable for re-payment.

Boundaries not altered to exclude from taxation.

Tax to be levied to pay loans.

Proceedings for loan by joint school district.

to be paid by the said L. M., as hereinafter mentioned, do hereby lease, demise and let unto said L. M., all that tract of swamp land in said town, described as follows: (*here describe land*) for the purpose of cutting grass and (*or*) picking cranberries therefrom; to have and to hold the said premises during the term of one year from the ____ day of ____, 18—, subject to termination as hereinafter specified; the said lessee yielding and paying therefor, as rent, the said cash price of ____ dollars, on the ____ day of ____, 18—, (*or twenty-five dollars on the ____ day of ____, 18—, and twenty-five dollars on the ____ day of ____, 18—*).

And the said C. D. doth hereby covenant to make punctual payment of said sum (*or sums*) of money at the time (*or times*) aforesaid, and that he will not cut any timber, nor do any waste upon the premises hereby demised.

This lease being subject to termination, as provided by law on the sale of said land, it is further agreed by and between the parties hereto, that in case of such sale and the determination of this lease thereby, the said C. D. will thereupon pay to said town board such proportion of the said cash price, as the time between the date hereof and the date of the sale of said land shall bear to the entire term of one year, beginning as before mentioned (*or other terms fixed by the board and agreed upon.*)

In witness whereof the parties have hereunto set their hands and seals, the day and year first above written.

In presence of:

M. N.
O. P.

_____, (Seal.) }
_____, (Seal.) } Town Board.
_____, (Seal.) }
L. M. (Seal.)

Secretary of state to furnish county clerks amount of taxes to be levied for such loans.

Apportionment of tax on loan of joint district.

County clerks to include same in apportionment of state taxes.

Town clerk to charge amount apportioned in tax roll.

the several towns of which such district is composed, of such loan and the terms thereof; and thereafter the town clerk of each town shall, on or before the second Monday of September in each year, until such loan be paid, transmit to the secretary of state, a statement (2) certified by him of the valuation of all taxable property belonging to that part of such district which lies in his town, according to the last assessment roll; or, if the same shall have been equalized, as provided in section four hundred and seventy-one, such equalized valuation thereof. The secretary of state shall in every year furnish to the county clerk of each county, in which lies any school-district or part of district from which any such payment is to become due, the amount to be levied upon such district; or, if a joint district, upon each such part of such district as lies in any town in such county, at the same time that he furnishes that officer a statement of the state tax. In apportioning such tax to the parts of a joint school-district lying in separate towns, the secretary of state shall take, as the true valuations, the valuations of the taxable property stated in the application for such loan, until amended by the certified statements aforesaid of the town clerks of all the towns in which such joint district lies. The county clerk on receiving such statement, shall include the amount due from such district or part of district in his apportionment of state taxes to the town; but it shall be carried out in a separate column, and the district from which it is due shall be specified. The town clerk shall charge and carry out such amount on his tax roll to the district or part of district to which it belongs, in a separate

(2) *Form of Certified Statement by Town Clerk.*

To the secretary of state :

I hereby certify that the valuation of all taxable property belonging to that part of joint school-district number —, of the towns of M. and N., which lies in said town of M., according to the last assessment roll, is — dollars. (*Or, if equalized under section 471, say :* The relative proportion of district taxes to be assessed upon that part of joint school-district number —, of the towns of M. and N., which lies in said town of M., is (*forty*) per cent. of such taxes, having been duly equalized, as provided in section four hundred and seventy-one, revised statutes.)

Dated this — day of —, 18—.

—, *Town Clerk of the Town of M.*

column, and the tax shall be collected and paid over with and in the same manner as the state tax.

CHAPTER 167, LAWS 1881.

AN ACT to authorize loans and extensions of loans from the trust funds of this state.

SECTION 1. In addition to the investments permitted by existing laws, the commissioners of public lands are hereby authorized, in their discretion, to invest the school fund, the university fund, the normal school fund and the agricultural college fund, from time to time, as moneys belonging to those funds may be in the state treasury, in loans to towns, villages, cities and counties, within this state, as hereinafter provided; and every town, village, city and county in this state, is hereby empowered to borrow of said commissioners, from said funds, or either of them, such sum or sums of money, for such time and upon such conditions and terms, as may be agreed upon by and between said commissioners and the town, village, city or county applying for a loan, subject, however, to the limitations, restrictions and conditions hereinafter set forth.

Trust funds
may be loaned

SECTION 2. The loans provided for in this act may be made for any term not exceeding twenty years, may be made payable in installments and may be in such amounts as shall not, in connection with all other indebtedness of the town, village, city or county, applying therefor, exceed five per centum of the average assessed valuation of the taxable property therein for the three years next preceding the application for such loan. Provided, that such loan may be made to pay off existing indebtedness, and may be paid over in installments as fast as such indebtedness or the evidence thereof is canceled. The interest to be reserved and paid upon such loans shall be at the minimum rate established by law at the time the loan is made, and shall be paid in advance from that date to the first day of the next January, and thereafter annually in advance, as hereinafter provided.

Loans how
made.

SECTION 3. Every application for a loan, under the provisions of this act, shall be made in writing, stating the amount required, the purpose to which

Application
loan.

it is to be applied, and the time and terms of repayment, and shall be accompanied by due proof of the assessed valuation, for the preceding three years, of the taxable property within the town, village, city or county making the application, and of the existing indebtedness thereof; but no loan shall be made to any town unless it shall appear to the satisfaction of the said commissioners that all the supervisors of such town have approved and authorized the application therefor; nor to any village, unless it shall appear that the application therefor has been approved and authorized by a vote of not less than three-fourths of all the trustees of such village, had and taken by ayes and noes, duly recorded, at a regular meeting thereof; nor to any city, unless it shall appear that the application therefor has been approved and authorized by a vote of not less than two-thirds of all the members of its common council, had and taken by ayes and noes, duly recorded, at a regular meeting thereof; nor to any county, unless the application therefor shall have been approved and authorized by the vote of not less than two-thirds of all the members of its board of supervisors, at some regular or special session thereof.

Certificates of
indebtedness.

SECTION 4. In case the application for any loan under the provisions of this act shall be approved by the said commissioners, they shall forthwith cause certificates of indebtedness to be prepared in proper form, and transmitted to the town, village, city or county submitting the application. The said certificates shall be executed and signed for a town by its chairman of supervisors, for a village by its president, for a city by its mayor, and for a county by the chairman of its board of supervisors, and shall be countersigned respectively by the town, village, city or county clerk, and returned to the said commissioners, to be deposited with the secretary of state, who shall thereupon draw his warrant upon the state treasurer for the amount of such loan, and the same, less the interest thereon to the first day of the next succeeding January, shall be paid to the treasurer of the town, village, city or county making such loan, or as he may direct; and said certificates of indebtedness shall then be absolute and conclusive evidence of the existence and val-

idity of such indebtedness, and that all the requirements of law concerning the application for the making and the acceptance of such loan, have been complied with.

SECTION 5. All the taxable property in any town, village, city or county, which has heretofore obtained, or shall hereafter obtain, any loan from the state, or any of its trust funds, shall stand charged for the payment of the principal and interest thereof, and the boundaries of such town, village, city or county shall not be changed or altered so as to exclude therefrom any land included therein at the time of making such loan, until such loan shall be fully paid, without the consent of the commissioners of public lands and upon such terms as they shall prescribe; and there shall be annually levied upon the taxable property of such town, village, city or county, besides all other taxes, a tax sufficient to pay the annual interest and the installments of principal of such loan as hereinafter provided, and the same shall be a special charge to be paid next after the state tax, out of any moneys collected as taxes within said town, village, city or county.

Taxable property to stand charged with the debt.

SECTION 6. The secretary of state at the time that he furnishes a statement of the state tax to that officer, shall in every year, furnish to the county clerk of each county in which any such special charge for principal or interest, on account of any loan from the state or any of its trust funds is due or will become due within the next succeeding twelve months from said county or from any town, village or city therein, a statement of the amount or amounts thereof, showing in detail the amounts due or to become due as aforesaid from the county, and the amounts due or to become due as aforesaid from any town, village or city in said county. The county clerk on receiving such statement, shall apportion and include the amount to be paid by the county in his apportionment of the state taxes to the several towns, villages and cities in his county, and shall add to the amount thus apportioned to each town, village or city, all special charges, if any, that are to be paid by such town, village or city, on account of any loan thereto from the state or any of its trust funds. The amounts thus apportioned and included shall be stated in

Secretary of state to furnish statement to county clerk.

separate sums and carried out in all tax rolls and reports in separate columns; but otherwise the same shall be levied, charged and inserted in the several tax rolls and be collected and paid over with and in the same manner as the state tax, until paid into the treasury; and in case of neglect or refusal to pay any sum or sums when due, the same shall be subject to all the provisions of law applicable to cases of default in payment of state taxes.

Duty of attorney general and secretary of state in case officers neglect or refuse to perform duties required by this act.

SECTION 7. In case any officer shall neglect or refuse to perform any duty required of him by this act or any other law of this state, in relation to the levy or collection of any tax required to be raised to make any payment of principal or interest on any loan from the state or any of its trust funds, the attorney general will forthwith apply to the supreme court for a mandamus to compel the performance of such duty, and the secretary of state may do or cause to be done the duty required of such officer, and so neglected or refused to be done, with the same effect as if done by him.

Misapplication of loan forbidden.

SECTION 8. No money obtained by any town, village, city or county, by loan from the state, or any of its trust funds, shall be applied to or paid out for any purpose except that specified in the application therefor, without the consent of the commissioners of public lands, and if any supervisor, chairman of any town or county board of supervisors, mayor of any city, president of any village, or treasurer of any town, county, city or village, shall make or sign any order or warrant, or shall pay out or suffer or cause to be appropriated or paid out, any such moneys contrary to the provisions of this section, he shall, upon conviction thereof, be punished by confinement at hard labor in the state prison, for a term not exceeding five years, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment, in the discretion of the court.

Penalty for violation.

Extension of loan.

SECTION 9. All loans which have heretofore been made, or may hereafter be made from any of the trust funds of the state, to any school-district, town, village, city or county, may be extended for such time and upon such terms as may be agreed upon by and between the commissioners of public lands, and such district, town,

village, city or county; provided, however, that no loan shall be extended upon which there is any default in the payment of interest at the time of making such application, nor to any period beyond twenty years from its inception, nor at a rate of interest less than the minimum established by law.

SECTION 10. In every case when the county board of supervisors, town board of supervisors, common council of any city, or village board of any village, is not specially authorized by law to procure loans and make appropriations for the purpose for which any such loan is required, such county, town, city or village shall, before applying for such loan, authorize such application by vote of a majority of the legal voters of such county, town, city or village, by a majority of the legal voters voting on said question at a general or special election. At least three weeks notice of the submitting of said proposition shall be given, in the same manner that notices of special elections to fill vacancies in elective offices are required to be given, before such vote, which shall be by ballot, shall be taken; and said notice shall state the amount of the loan to be applied for and the purpose for which the same is to be appropriated.

When votes of legal voters is required.

SECTION 11. Subdivision five, of section two hundred and fifty-eight, of the revised statutes, relating to the investment of the trust funds, and all acts and parts of acts authorizing loans to the citizens of the state of the trust funds of the state, or relating to the manner of making such loans, are hereby repealed.

Repealed.

SECTION 12. All acts and parts of acts contravening the provisions of this act, are hereby repealed.

Repealed.

NOTE: Forms under this law will be furnished upon application to the state land office, Madison, Wis., and are therefore omitted here.

OF COMMON SCHOOLS.

FORMATION OF DISTRICTS.

(Chapter XXVII, R. S. 1878)

1 Pin. 624.
54 Wis. 155.

SECTION 412. (As amended by Ch. 355, L. 1885). The town board in each town in this state shall have power to form and alter districts in the manner hereinafter set forth; provided, that every school-district shall be of contiguous territory, and shall not embrace more than thirty-six square miles of land, and that whenever any school-district which has by vote contracted a debt, shall be altered by taking territory from it before such debt is fully paid, no such alteration shall be made as to leave to the district from which such territory is taken, an indebtedness exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes, previous to the incurring of such indebtedness.

How Formed.

1 Pin. 624.

SECTION 413. The formation of any such school-district shall be by written order (1) of the town board, describing the territory embraced in the same, to be filed with the town clerk within twenty days after the making thereof. The supervisors shall deliver to a taxable inhabitant of

(1) *Form of order Organizing a new School-District to be filed with the Town Clerk.*

It is hereby ordered and determined that (*here describe the territory to be comprised in the district, by sections and parts of sections*) shall hereafter constitute a school-district, to be known as school-district number _____ of the town of _____.

Given under our hand this _____ day of _____, 18—.

A. B., } Town board of
C. D., } the town of
E. F., } _____.

the district their notice (1) thereof in writing, describing its boundaries, and appointing a time and place for the first district meeting, and shall therein direct the inhabitant to notify every qualified voter of the district, either personally or by leaving a written notice (2) at his place of residence, of the time and place of such meeting, at least five days before the time appointed therefor, and said inhabitant shall notify the voters of such district accordingly, and indorse thereon a return (3) containing the names of all persons thus notified, and said notice and return shall be recorded as a part of the record of the first meeting in such district.

- (1) *Form of Notice for the first Meeting of a School-District, to be delivered by the Town Supervisors to a taxable inhabitant of the District*

To A. B., a taxable inhabitant of school-district number _____ of the town of _____:

Having on the _____ day of _____, 18—, formed a new school-district, to be known as school-district number _____ of the town of _____, or joint school-district number _____ of the towns of _____ and _____, in case it be a joint district, comprising the following territory (here insert the description of the district as in form 1, page 64, ante), you are hereby directed to notify every qualified voter of said school district, either personally or by leaving a written notice at his place of residence, at least five days before the time herein fixed therefor, to attend the first district meeting of said district, which is hereby appointed to be held at the house of _____, in said district, on the _____ day of _____, 18—, at _____ o'clock in the _____noon.

Dated this _____ day of _____, 18—.

_____, } Supervisors of
_____, } the town of
_____, }

- (2) *Form of Notice of first meeting, to be left at the Residence of a Voter when Absent.*

To A. B.:

By direction of the supervisors of the town of _____, you are hereby notified that the first meeting of school-district number _____ of _____, recently formed, will be held at the house of _____, in said district, on the _____ day of _____, 18—, at _____ o'clock in the _____noon. Your attendance is requested. [Signed.] G. H.,

Person appointed to give notice,

- (3) *Form of Return to be Indorsed upon Notice of Town Supervisors, on the Formation of a School-District.*

STATE OF WISCONSIN, }
County of _____, } ss.

A. B., being duly sworn, says that the within (or annexed)

5—T. L.

When inhabitants neglect to assemble.

Or district be disorganized.

SECTION 414. In case such notice shall not be given, or the inhabitants of a district shall neglect or refuse to assemble and form a district meeting when so notified, or in case any school-district, having been formed or organized, shall afterwards be disorganized, so that no competent authority shall exist therein to call a special district meeting in the manner hereinafter provided, notice (1) shall be given by the town board, and served in the manner prescribed in the preceding section. Whenever a district meeting shall be

notice was delivered to him by the supervisors of the town of —, in said county, on the — day of —, 18—, that he has notified every qualified voter of school-district number —, of said town, of the time and place appointed for the first district meeting therein, pursuant to the directions of said notice, to wit: That on the — day of —, 18—, he notified the following named, personally (*giving the names*); that on the — day of —, 18—, he notified the following persons (*giving names*), they not being found, by leaving at the place of residence of each of them a written notice of the time and place appointed for such meeting.

Subscribed and sworn to before me this — day of —, 18—.

(1) *Form of Notice of School-District Meeting, under Section 414*

To E. F., a taxable inhabitant of school-district number — of —:

Whereas the undersigned, supervisors of the town of —, in the county of —, on the — day of —, 18—, formed a new school-district, to be known as school-district number — of the town of —, comprising the following territory (*here insert description of the district*), and afterwards duly made out and delivered to A. B., a taxable inhabitant of said district, a notice of the time and place of the first district meeting therein, which was appointed to be held at — (*place*), on the — day of —, 18—, at — o'clock in the — noon, which notice the said A. B. failed to give; (or) the inhabitants of said district neglected or refused to assemble and form a district meeting, having been duly notified of the time and place thereof, appointed as aforesaid; (or, whereas school-district number —, etc., having been formed and organized, afterwards became disorganized, so that no competent authority exists therein to call a special district meeting, as provided by law):

You are hereby directed to notify every qualified voter of said school-district number —, etc., either personally, or by leaving a written notice at his place of residence, at least five days before the time herein fixed therefor, to attend the first (or a special) district meeting of said district, which is hereby appointed to be held at the house of —, in said district, on the — day of —, 18—, at — o'clock in the — noon.

Dated this — day of —, 18—. —, —, —, } Supervisors, of, etc.

called as prescribed in this and the preceding section, it shall be the duty of the electors of the district to assemble at the time and place so directed.

SECTION 415. Whenever it shall become necessary to form a district from two or more adjoining towns, the town boards of such towns shall meet together and form such district by their written order, (2) describing the territory embraced in such district, signed by at least two of the supervisors of each town; and shall file one such order with the town clerk of each town, and deliver the notice (a) of formation to a taxable inhabitant of such district, and cause the same to be served and returned in the time and manner hereinbefore prescribed; and any such district may be altered only by the joint action of the town boards of such towns in the same manner that other districts are altered.

How joint district formed or altered.

25 Wis. 468.
35 Wis. 178.
40 Wis. 108.
17 Wis. 88.

SECTION 416. Every school-district shall be deemed duly organized when any two of the officers elected at the first legal meeting thereof shall have consented to serve in the offices to which they have been respectively elected, by a written acceptance thereof, filed with the clerk of the first meeting, and recorded in the minutes thereof; and every school-district shall be considered as duly organized, after it shall have exercised the franchises and privileges of a district for the term of two years.

When district deemed organized.

Pin. 624.

SECTION 417. Every school-district organized in pursuance of this chapter, or which has been organized pursuant to law, shall be a body corporate, and shall possess the usual powers of a corporation for public purposes, by the name and

To be body corporate.

4 Wis. 79.
37 Wis. 387.

(2) Form of Order Organizing a Joint School-District.

It is hereby ordered and determined that (*here describe the territory by sections and parts of sections, etc.*) shall hereafter constitute a school-district to be known as joint school-district number —, of the towns of (*here insert the names of all the towns in which any portion of the district is situated.*)

Given under our hands this — day of —, A. D. 18—.

—, —,	} Town board of the town of
—, —,	
—, —,	
—, —,	} Town board of the town of
—, —,	
—, —,	

(a) The notice must be signed by the supervisors of each town. See form 1, page 65.

style of school-district, or joint school-district number — (the name of the town or towns in which the district is situated); such number shall be designated by the town board or boards in the formation thereof; and in that name shall sue and be sued, and be capable of contracting and being contracted with, and of holding such real and personal estate, as is authorized to be purchased by law, and of selling the same.

ALTERATION OF DISTRICTS.

How may be altered.

1 Pin. 623.
4 Wis. 79.
11 Wis. 29.
54 Wis. 155.
60 Wis. 398.

SECTION 418. Whenever the town board shall contemplate an alteration (a) of the boundaries of a school-district, they shall give at least five days notice (1) in writing, to the clerk of the district or districts to be affected thereby, stating in such notice the time and place, when and where they will be present to decide upon such proposed alteration; and such clerk or clerks shall immediately notify the other members of the board; and no territory shall be detached from any district, unless it be by the same order attached to another; and any district may be dissolved by attaching all its territory to other districts (b) (c).

(1) *Form of Notice to be given to the District Clerk when Alteration of Boundaries of District contemplated.*

To the clerk of district number —, in the town of —:

Whereas, the undersigned town board of the town of —, contemplate an alteration of the boundaries of school-district number — of said town, as follows: (*here set forth the proposed alteration*), you are hereby notified that we will be present at (*state place*) on the — day of —, 18—, at — o'clock in the — noon, to decide upon such proposed alteration.

Dated this — day of —, 18—.

A. B., } Town board of
C. D., } the town of
E. F. }

NOTE.—In case of a joint district, the above notice must be signed by the town board of each town, a part of which is embraced in the district or districts to be affected by the proposed alteration. Not only the district which is to lose, but the district which is to acquire territory must be notified, being the districts "to be affected" by the alteration.

(a) Boundaries of school-districts not to be altered so as to exclude any land included therein at the time of making loan from the state, until loan is fully paid, without consent of commissioners of public lands. [Section 263, R. S.]

(b) School-districts are corporations for certain specified purposes, and their names can be changed and their boundaries altered, without losing any right or becoming released from any obligation. [*District No. 3 et al. v. Macloon et al.* 4 Wis. 79.]

(c) A town board has no power to alter the boundaries of a school-district unless proper notice is given as required by section 418, R. S. The school-district officers cannot waive the notice. [*State ex rel. Foster v. Graham*, 60 Wis. 395.]

SECTION 419. In all cases where an alteration of the boundaries of a school-district shall be made (1), the town board shall, within three days thereafter, give notice thereof by filing a copy of the order so altering the same, with the town clerk and with the clerks of the districts affected by such alteration, and no alteration of any school-district made without the consent (2) of a majority of the district boards, indorsed on such order, shall take effect until three months after notice given as above specified, unless such alteration is made in compliance with the order of the state superintendent given in the decision of an appeal; nor shall any alteration of an organized district be made to take effect between the first day of December in any year, and the first day of April following.

Notice upon
alteration.

District boards
to consent.

SECTION 419a. (Ch. 280, L. 1882.) 1. Whenever an application in writing for an alteration in the boundaries of any joint school-district, signed by not less than one-third of the lawful voters re-

Authorized ap-
peal in certain
cases.

(1) *Form of Order Altering the Boundaries of a School-District.*

COUNTY OF _____, }
Town of _____, } ss,

The town board of the town of _____, having duly met pursuant to notice given as provided by law, on the _____ day of _____, 18—, to decide upon an alteration of the boundaries of school-district number _____, of the town of _____, and having decided upon the same, it is hereby ordered and determined that (*here describe the territory by sections and parts of sections*), now part of school-district number _____, of the town of _____, be, and her-by are taken from said school-district, and attached to and made a part of school-district number _____, of said town, for all purposes whatsoever.

This order will take effect on the _____ day of _____, 18—.

Given under our hands this _____ day of _____, 18—.

A. B., } Town board
C. D., } of the town
E. F., } of _____.

NOTE.—When the boundaries of a joint district are to be altered, the order will be adapted to the case, and signed by the town board of each town.

(2) The board of each district affected by the alteration may indorse their consent on the order, as follows:

We hereby consent to the alteration made in school-district number _____, of the town of _____, agreeably to the within order of the town board of said town.

Dated this _____ day of _____, 18—.

G. H., Director, } Of said school district
E. F., Treasurer, } number _____, of the
C. D., Clerk. } town of _____.

NOTE.—When such consent is not indorsed upon the order, it will not take effect until three months from the date of filing the order.

siding in the districts to be affected by the proposed alteration, shall be presented to the chairman of supervisors of the town in which the school-house of such joint district may be situated, such chairman shall thereupon fix a time for the joint meeting of the town boards of the towns in which such joint school-district may be situated, which time shall not be less than ten nor more than twenty days after the day of the presentation to him of such application. He shall also cause a notice of the time and place of such meeting to be given to each supervisor entitled to be present thereat, which notice shall be served at least five days prior to the date fixed for such meeting. Such meeting shall be held at the school-house in such joint district unless some other convenient place shall be designated in the notice therefor.

Refusal to act
deemed denial
of application.

2. If the chairman or supervisors to whom such application shall be presented, shall neglect or refuse to fix the time, or to give notice for the meeting of the town boards as provided in the first section of this act, or if the said supervisors or a majority thereof of any town in which a part of said joint district may be situated, shall neglect or refuse to be present at such meeting; or, being present, shall neglect or refuse to hear and decide upon such application, the application shall be deemed denied, and an appeal may be had therefrom in the same manner and with like effect as in other cases of denial.

3. The provisions of sections 418, 419, 422 and 497, of the revised statutes shall, so far as the same may be applicable, apply to proceedings under this act.

Division of
property on
forming new
district.

3 Wis. 333.
11 Wis. 29.
21 Wis. 348.
35 Wis. 178.

SECTION 420. When a new district is formed, in whole or in part, from one or more districts, possessed of a school-house or entitled to other property, the town board, at the time of forming such new district (a), shall ascertain and determine the proportion of the value of the school-house and other property, justly due to such new district, according to the taxable property of the

(a) The provision that the proportionate sum to be paid to the new district shall be ascertained and determined "at the time of forming such new district" is directory merely; and if not complied with at the time specified, it may be complied with afterwards, *State ex rel. Bement v. Rice*, 35 Wis., 178.

respective parts of such former district, at the time of the division, by the best evidence within their reach; and such amount of any debt, due from the former district, which would have been a charge upon the new, had it remained upon the former district, shall be deducted from such proportion.

SECTION 421. The town board shall certify (1) to the district clerk of each district retaining a school-house or other property, the amount ascertained by them as the proportion to be paid to the new district, and such amount shall be embodied in the next statement of taxes to be made by the district clerk to the town clerk, as required by section four hundred and seventy-two, and shall be collected and paid to the treasurer of the new district to be applied toward providing a school-house therefor; and the money so received shall be allowed to the credit of the taxable property taken from the district, paying the same in reduction of any tax that may be imposed on said taxable property in the new district for the building of a school-house; but in case the new district shall have raised a tax and provided a school-house before such money shall have been received, the treasurer of the new district, who shall receive, or have the amount so paid him or his predecessor, shall pay on demand, each tax payer the amount actually paid by him in school-house taxes, in excess of the amount he would have paid, if the money had been received

Town board to certify to districts proportion due new districts.

How same collected and paid.

(1) *Form of Order of Town Board determining Proportion of Value of Property due to New District.*

To the district clerk of school-district number —, of the town of —:

Having formed new school-district number —, of the town of —, in part (or wholly) from the territory of your district, we have ascertained and determined, and do hereby certify, the proportion of value of the school-house and other property justly due to such new district, from your district retaining such school-house and other property, to be — dollars. You are, therefore, to raise and collect by tax, upon the taxable property of your district, the said sum of — dollars, and when collected pay the same to the treasurer of said new district.

Given under our hands this — day of —, 18—.

A. B., } Town board
C. D., } of the town
E. F., } of —.

NOTE — In case of a joint district, the above certificate must be signed by the town board of each town embraced in part in the district.

and credit given before such taxes were collected, and the treasurer shall be liable therefor on his official bond.

District partly in city or village and partly in town, how altered, etc.

SECTION 422. Whenever any school-district shall lie partly in a city, or village incorporated by special act, and partly in an adjoining town or towns, the common council of such city or trustees of such village and the town boards of such towns, may alter or extinguish the same in the manner in which any other joint school-district may be altered or extinguished; but no new joint district shall be formed, which shall embrace any part of a city (a).

District neglecting to maintain a school for two years to be attached to adjoining.

SECTION 423. Whenever any school-district for two or more successive years neglects to maintain a public school as required by law, the town board of the town, embracing the district, shall attach the same to such other adjoining district or districts in the town as they shall judge proper; and if the district be a joint district, then the town boards of the several towns shall attach the respective parts thereof to other districts in their respective towns (1).

How property then to be disposed of.

SECTION 424. In every case where a district shall become dissolved by reason of the attachment of all its territory to some other district or districts, the town boards of the several towns embracing such district shall take charge of the property belonging to the same at the time of its dissolution, dispose of the same by grant or otherwise, and apply the proceeds to the discharge of its debts, paying over the remainder, if any, to

(a) See forms under sections 418, 419.

(1) *Form of Order dissolving School-District.*

Whereas, school-district number — of the town of —, (or, joint school-district number — of the town of —), has neglected to maintain a public school, as required by law, for two (or more) successive years; it is ordered and determined by the town board of said town of — (or, town boards of the towns of —), that said district, (or joint district) number —, be, and the same is, hereby dissolved and attached to the adjoining districts, in manner following, to wit: To school-district number — of said town of —, section (*describe the part attached*): To school-district number —, etc.

Given under our hands this — day of —, 18—.

—, } Town board
—, } of the town
—, } of —.

the treasurer of the districts to which the territory has been attached, in proportion to the valuation of the property attached to each, as appears from the last tax rolls of the respective towns.

* * * * *

SECTION 432. The director, treasurer and clerk District board. shall constitute the district board. Meetings of the board may be called by any two members thereof, by serving on the other member a written notice of the time and place of such meeting, at least twenty-four hours before such meeting is to take place. No act authorized to be done by the district board shall be valid unless voted at a meeting of the board.

SECTION 433. The said board shall have power to fill by appointment any vacancy that may occur in their own number, within ten days after such vacancy shall occur; and if such vacancy shall not be filled within ten days, as aforesaid, by said board, the town clerk shall fill such vacancy by appointment. In case a vacancy shall occur in a joint district, and shall not be filled by the district board, the clerk of the town in which the school-house is situated shall fill such vacancy (1). Any person appointed to fill a vacancy, upon being notified of such appointment, shall be deemed to have accepted the same, unless he shall, within five days thereafter, file with the clerk or director a written refusal to serve; and any person appointed to fill a vacancy shall hold the office until the annual meeting succeeding such appointment, at which the electors shall fill such vacancy for the unexpired term.

* * * * *

SECTION 437 (as amended by section 2, chapter 124, laws 1885). If any district shall not, at its annual meeting, or at a subsequent special meet-

(1) Form of Appointment by Town Clerk to fill Vacancy in District Board.

To A. B.:

The office of (clerk, director or treasurer) of school-district number —, of the town of —, having become vacant, and the district board of said district having failed to fill the same within ten days after the occurrence thereof, you are hereby appointed to fill such vacancy until the next annual meeting of said district, succeeding this appointment.

Dated this — day of —, 18—.

—, Town Clerk.

ing, prior to the third Monday of November following, vote a tax sufficient to maintain a school in said district for the term of six months, during the ensuing year, the district board shall then, on or before the Wednesday next following said third Monday of November, estimate and determine the sum necessary to be raised to maintain such school, and the district clerk shall forthwith certify to the town clerk the amount so fixed, who shall assess the same as other district taxes are assessed, and all school money received from the school fund income shall be applied exclusively to the payment of teachers' wages.

* * * * *

COUNTY SUPERINTENDENTS.

Duties of.

SECTION 461. It shall be the duty of every county superintendent:

* * * * *

And how declare school building unfit for use.

4. To make an order (1) in concurrence with the chairman of the town board in which any school-house is situated, which they shall deem unfit for school purposes and not worth repairing, declaring such fact and reciting the reason therefor. They shall deliver such order to the clerk of the district, and transmit forthwith a copy thereof to the clerk of the town, and also to the state superintendent. Such order shall take effect from its date, unless within thirty days after it is delivered to the district clerk the same shall be reversed by the state superintendent, for cause

(1) *Form of Order under Subdivision 4, Section 461.*

COUNTY OF _____, }
Town of _____, } ss.

We, the undersigned, A. B., county superintendent of said county, and C. D., chairman of said town of _____, deeming the school-house in school-district number _____ of said town unfit for school purposes and not worth repairing, do, acting in concurrence, order that the same be and hereby is declared to be unfit for school purposes and not worth repairing, for the reason that said school-house is (*here recite reason, as, that that the same is dilapidated, etc.*)

Dated this _____ day of _____, 18—.

County Superintendent.

Chairman of Town Board of _____.

NOTE.—Blank reports, under section 463, prepared by the superintendent of public instruction, are annually sent to town clerks, and the form is consequently omitted. [See section 463, R. S.]

shown, and from the time said order shall take effect, the district shall not share in any apportionment of the school fund income, for any school kept in any building so declared to be unfit for school purposes.

* * * * *

SECTION 463. (As amended by section 2, Ch. 72, L. 1882, and section 3, Ch. 298, L. 1883.) Each town clerk shall, between the tenth and fifteenth days of August, in each year, make and transmit to the county superintendent of the county or district in which his town is situated, a report, bearing date on the tenth day of said month, stating:

1. The whole¹ number of school-districts separately set off within the town, and the number of parts of joint districts, in which the school-houses belonging thereto are located in his town. School districts.

2. The districts and parts of districts from which reports shall have been made within the time limited for that purpose. Districts and parts of districts.

3. The length of time a school shall have been taught in each such districts or parts of districts. Time taught.

4. The amount of public money received in each. Public money received.

5. The number of children taught in each, and the number of children over the age of four, and under the age of twenty years residing in each. Number of children taught.

6. The whole amount of money received in the town for school purposes, since the date of the last preceding report, setting forth separately the amount received from the state through the county treasurer. The amount levied by the county board and the amount raised by the town at its annual meeting. Whole amount of money received.

7. The amount of money raised by district tax for school purposes. Tax raised.

8. The manner in which said moneys have been expended, and whether any, and what part remains unexpended, with such other information as the state superintendent may require, and as may be reported to him by the district clerks. How money was expended.

* * * * *

SECTION 467. It shall be the duty of the town clerk: Town clerk's duties.

1. (1) To report to the county superintendent within ten days after his election or appointment his name and post-office address, and likewise the name and post-office address of each district clerk, within ten days after the same are filed in his office.

2. To see that the annual reports of the several district clerks are made correctly and in due form; to file and safely keep all reports whatsoever made to him; and all orders and notices of the town board relative to any school-district.

3. To record such description of school-districts, and such orders concerning the organization, alteration or dissolution thereof, as shall be made by the town board.

4. To make and keep in his office a map of the town, showing the exact boundaries of all the school-districts therein, as appear from the records on file; and when a new district is formed, to make and furnish a map thereof to the district clerk.

5. To apportion (2) the school money collected

(1) *Form of Report of Town Clerk to County Superintendent of the Names and Post-office Address of the District Clerks in his town.*

To the county superintendent of schools of the county of _____:

SIR:—I hereby report to you the names of the school-district clerks in the town of _____, and their address as follows:

District.	Name of Clerk.	Post-office.
No. 1	A. B. ....	.....
No. 2	C. D. ....	.....
No. 3	E. F. ....	.....
No. 4	G. H. ....	.....
No. 5	I. K. ....	.....
No. 6	L. M. ....	.....
Joint No. 1	N. O. ....	.....
" " 2	P. R. ....	.....
" " 3	S. T. ....	.....

The post-office address of the undersigned is _____.

Dated this _____ day of _____, 18—.

_____, Town Clerk.

(2) *Form of Notice to Town Treasurer of Apportionment of School Moneys by the Town Clerk.*

To the treasurer of the town of _____:

You are hereby notified that I have apportioned the school moneys now in your hands to the different districts of the town, as follows:

To district No. 1	\$.....	To district No. 6	\$.....
" " " 2 .....	.....	" " " 7 .....	.....
" " " 3 .....	.....	To joint district No. 1 .....	.....
" " " 4 .....	.....	" " " 2 .....	.....
" " " 5 .....	.....	" " " 3 .....	.....

Dated this _____ day of _____, 18.

_____, Town Clerk.

by the town, on the third Monday of March, and that received from the state on the third Monday of June of each year, or as soon thereafter as the same shall be collected or received by the town treasurer, to the several districts and parts of districts within the town, as provided in these statutes.

SECTION 468. It shall be the duty of the town treasurer: Town treasurer's duties.

1. To apply for and receive from the county treasurer all moneys apportioned for the use of common schools in his town, and to pay the same, together with all moneys collected in the town for the support of schools, to the treasurers of the districts entitled to receive them, upon the order or apportionment of the town clerk.

2. To pay to the district treasurer on demand all school-district taxes raised in each district and collected by him, and the amount of all school-district taxes returned to the county treasurer of his county as delinquent, whenever the same shall have been paid to him by said county treasurer, or whenever he shall receive credit from the county treasurer for such delinquent tax or any part thereof, on account of any demand or claim due from such town to such county.

3. On or before the second Monday of March in each year, to certify (1) to the town clerk the amount of school money in his hands, to be apportioned by said clerk, and immediately upon the receipt of any money from the school fund income, to certify the same to the said clerk for apportionment. To certify annually money on hand to be apportioned.

4. On the last Monday in June in each year, to make and forward to the clerk of each school-district in whole or in part in his town, a certified To report annually to district clerks amount of

(1) *Form of Certificate of Town Treasurer of Moneys in his Hands Subject to Apportionment.*

To A. B., town clerk of the town of ———:

I hereby certify that there is now in my hands the sum of ——— dollars, school moneys, subject to apportionment to the school-districts in said town entitled thereto.

Dated this ——— day of ———, 18—.

C. D., Town Treasurer.

money paid by
town to district
treasurer.

statement (1) of the amount of money paid by the town treasurer during the year next preceding to such district treasurer, specifying the date and amount of, and the account upon which each such payment was made.

To prosecute
county treas-
urer refusing to
pay over school
money.

5. If the county treasurer shall neglect or refuse to pay over the school money, which by law should be paid to the town treasurer, he shall commence and prosecute an action on the official bond of such county treasurer for the recovery of such money.

ASSESSMENT AND COLLECTION OF DISTRICT TAXES.

School district
taxes, how
assessed.

SECTION 469. All school-district taxes, unless otherwise specially provided by law, shall be assessed on the same kinds of property as taxes for town and county purposes; and all personal property which, on account of its location or the residence of its owner, is taxable in the town, shall if such locality or residence be in the school-district, be likewise taxable for school-district purposes.

When real es-
tate not sepa-
rately valued,
town clerk to
estimate.

SECTION 470. Whenever any real estate in any school-district shall not have been separately valued in the assessment roll of the town, and the valuation of such real estate cannot be definitely ascertained from such assessment roll the town clerk shall estimate the value of the same in proportion to the valuation affixed in said assessment roll to the whole tract of which such lot or piece of land forms a part.

(1) Form of Certified Statement under Subdivision 4, of Section 468.

Statement of the amount of money paid by the undersigned, town treasurer of the town of ———, during the year next preceding the last Monday in June, A. D. 18—, to E. F., district treasurer of district (or joint district) number ———, of said town.

YEAR.	Mon.	Day.	On what account.	Amount.	

I hereby certify that the foregoing statement is correct.
Dated this ——— day of ———, A. D. 18—,
———, Town Treasurer.

SECTION 471. In case of a joint district, the town assessors of the towns in part embraced therein shall meet at the district school-house on or before the Saturday next preceding the time fixed for the return of the assessment rolls, and shall then compare the valuation of taxable property in the several parts of such district separated by town lines, and determine whether the relative valuation be just or not; if considered unjust, they shall then determine the relative proportion of district taxes to be assessed upon the several parts. If they cannot agree upon either of said matters, they shall call to their aid the supervisors of the several towns so in part embraced; if the assessors and supervisors cannot determine the question, they shall call to their aid the chairman of an adjoining town, whose vote shall decide the controversy. The determination when made shall be certified in writing (1) to the district clerk. If any assessor or supervisor shall

Assessment in
joint school
district, how
made.

(1) *Form of Determination under Section 471.*

Whereas, joint school-district number — of the towns of — and —, is composed of territory described as follows, to wit: Sections, *etc.*, in said town of —, and sections, *etc.*, in said town of —; and the assessors of said towns having met on the — day of —, 18—, at the district school-house in said district (*if such be the facts, say:* and being unable to agree as to the justice of the relative valuation of, and (*or*) as to the relative proportion of district taxes to be assessed upon the several parts of said district, the supervisors of said towns were called to their aid, *state further, if the fact* and such supervisors and assessors acting together, being unable to determine the question, and having called to their aid the chairman of the adjoining town of —), and having compared the relative valuation of taxable property in the several parts of such district separated by town lines as aforesaid, and considering the same to be unjust:

The undersigned do therefore hereby decide and determine, that for every dollar of district tax to be hereafter levied upon said joint school-district, the sum of (*sixty*) cents shall be assessed upon that part of the district lying in the town of —, and (*forty*) cents upon that part lying in the town of —, all of which we do hereby certify.

Dated this — day of —, 18—.

To A. B., Clerk of Joint School-District
number — of the Town of —.

G. H.,	} Assessors of
I. K.,	
L. M.,	
N. O.,	} Assessors of
P. R.,	
S. T.,	

NOTE — If the supervisors of the towns in which a part of the district lies, and the chairman of an adjoining town, are called to act, they will also sign the above.

refuse or neglect to act when called on as above provided, he shall forfeit twenty dollars.

17 Wis. 88.
25 Wis. 468.
87 Wis. 254.
46 Wis. 210.

SECTION 472 (As amended by ch. 305, L. 1881, and ch. 241, L. 1885.) Each district clerk shall, on or before the third Monday of November, in each year, deliver to the town clerk a statement (1) in writing, verified by his affidavit, showing the amount of taxes voted to be raised at the last annual meeting or at the first meeting after the organization of the district, or both, as the case may require, and all taxes voted at any special meeting held during the then next preceding year, and also the amount of tax therefor voted to be collected in such year, if any, for the annual payment on any loan, and also the amount to be paid by such district, if any, under the provisions of section 421. In case of a joint district, he shall deliver to the town clerk of each town in which any part of the district is situated, a statement so

(1) *Form of Statement to be Delivered by District Clerk to Town Clerk. (a)*

COUNTY OF ———, } ss.
Town of ———.

The amount of taxes voted to be raised in school-district number ——— of the town of ———, at the last annual meeting of said district, held on the ——— day of ———, 18—, is (write the amount in words) ——— dollars.

The amount of tax voted by said district on the ——— day of ———, 18—, to be collected in the year 18—, (insert year), for the annual payment on loan of money from the trust funds of the state (or as the case may be), is ——— dollars.

The amount to be paid by said district under the provisions of section four hundred and twenty-one, revised statutes, is ——— dollars. The sum total of the foregoing is ——— dollars.

Dated this ——— day of ———, 18—.

P. T., District Clerk.

NOTE.—If the district has been lately organized, and a tax was voted at the first meeting as well as at the annual meeting, that should be stated; also any tax voted at any special district meeting during the year next preceding the third Monday of November.

STATE OF WISCONSIN, } ss.
County of ———.

P. T., being duly sworn, says that he is the district clerk of school-district number ——— of the town of ———, and that the foregoing statement by him subscribed and made is in all respects true and correct.

P. T.

Subscribed and sworn to before me, this ——— day of ———, 18—.

J. P., Justice of the Peace.

(a) A failure upon the part of District Clerk to file such statement (form 1) invalidates school-district tax. [Powell vs. Supervisors, 46 Wis., 210.]

verified (1) showing the proportion of such taxes to be assessed in that part of the district within such town. If such proportion shall not have been determined as provided in the last preceding section, it shall be ascertained from the valuation contained in the last assessment rolls of the respective towns; and to that end the town clerk of each such town shall, on or before the last Monday in September in each year, deliver to the district clerk a certified statement of the valuation of the real and personal property in that part of such district lying within his town, as the same appears from said assessment roll.

SECTION 473. The town clerk shall assess the taxes so certified, upon the property liable thereto, placing the same in a separate column, in the next tax roll of his town, whenever so certified, before he shall have delivered the roll to the town treasurer for collection, although after the third Monday of November; if any such shall not be assessed in the next tax roll after being voted, it shall be assessed in that of the next succeeding year. Such taxes shall be collected, or returned delinquent by the town treasurer and collected by the county treasurer in all respects like other taxes.

Town clerk to
assess taxes.
proportion-
ably.

17 Wis. 84.
25 Wis. 408.
37 Wis. 354.

* * * * *

SCHOOL-HOUSE SITES.

SECTION 477. Whenever a school-district shall have designated by a majority vote of the electors thereof present at an annual meeting, or at a special meeting called for that purpose, a school-

Location of.
55 Wis. 408.

(1) Form of Statement to be Delivered by Clerk of Joint District to Town Clerk.

The amount of taxes voted to be raised in joint school-district number _____ of the towns of _____ and _____, at the annual meeting of said district, held, etc. (*continue as in preceding form*).

And the portion of such tax to be assessed in that part of said district within the said town of _____ is _____ dollars; and in that portion of said district within the said town of _____ is _____ dollars.

Dated this _____ day of _____, 18—. C. D.
Clerk of Joint School-District number _____, of the towns of _____ and _____.

NOTE—In case of a joint district, statements should be subscribed, verified and delivered to the clerk of each town, in which any part of such district is situated.

Proceedings,
when owners
of land refuse
to sell.

Application to
town board to
establish site.

house site, or an addition thereto, and shall be unable to obtain the same on account of the refusal of the owner to sell or lease the same for a just and reasonable compensation, or on account of his being a non-resident, or unknown, the district board when directed so to do by a vote of the electors of such district meeting shall make application (1) to the town board of their town to locate and establish the site, or any addition thereto, so designated.

SECTION 478. Whenever any such application shall be made to the town board, said board shall make and sign a notice (2) in writing of such application, containing a description of the land upon which it is proposed to locate such site or addition and the time and place when and where

(1) *Form of Application under Section 477.*

To the town board of the town of _____:

Whereas at an annual meeting (or, at a special meeting called for that purpose and) held on the _____ day of _____, 18—, school-district number _____ of the town of _____, designated by a majority vote of the electors thereof present at such meeting a school-house site (or, an addition to a school-house site) in said district as follows, viz.: (*here describe the location of the site or addition, selected*), but is unable to obtain the land so designated on account of the refusal of the owner thereof to sell or lease the same for a just and reasonable compensation (or, on account of the owner thereof being a non-resident, or unknown *as the case may be*):

Now, therefore, the undersigned district board of said school-district, having been directed by a vote of the electors of such district meeting so to do, hereby make application to the town board of said town of _____, to locate and establish the school-house site (or, the addition) so designated as aforesaid.

Dated this _____ day of _____, 18—.

_____, }
_____, } *District Board.*
_____, }

(2) *Form of Notice of Meeting to decide upon Application.*

To all whom it may concern:

Notice is hereby given that the undersigned will meet at _____ on the _____ day of _____, at _____ o'clock in the _____ noon, to decide upon the application of school-district number _____, of the town of _____, for the location and establishment of a school-house site (or, of an addition to a school-house site) for said district upon (*here describe the lands upon which it is proposed to establish the site or addition*).

Given under our hands this _____ day of _____, 18—.

_____, }
_____, } *Town board of*
_____, } *the town of*
_____, }

NOTE. — In case the application is made by a joint district, the town board of each of the towns in which any part of the district is situated, must sign the above notice and be present at the meeting to locate the site.

they will meet to decide upon the same. Such notice shall be served or caused to be served by the district clerk, upon all the occupants of such land, and all the owners thereof who are known and are residents of this state, at least six days previous to the day fixed for such meeting. Such notice shall be served by delivering a copy thereof to each such occupant and owner, or by leaving the same at their respective residences with some person of suitable age and discretion; and if the owner or owners of said land be unknown to said board, or shall reside without this state, then such notice may be served by publishing the same in the newspaper published nearest said land, once in each week, for six successive weeks next before the said day of meeting.

What notice to contain.

How notice served.

Notice to absent or unknown persons, how given.

SECTION 479. The town board shall meet at the time and place fixed in said notice, and upon due proof (1) of the service or publication of said

Meeting of board to locate site.

(1) *Form of Affidavit of Service to be Indorsed upon, or Annexed to, the above Notice*

STATE OF WISCONSIN, }
County of ———, } ss.

A. B., being duly sworn, says that on the ——— day of ———, 18—, he served the within and foregoing notice upon all the occupants of the land therein described, and upon all the owners thereof who are known and who are residents of this state, as follows, to wit: Upon C. D. and E. F. by delivering to each one of them a copy of said notice; and upon G. H. by leaving a copy thereof at his residence in the town of ———, with L. M., who is a person of suitable age and discretion; and upon O. P. by leaving a copy, etc. (*in like manner.*)

A. B.

Subscribed and sworn to before me, this ——— day of ———, 18—, ———, *Justice of the Peace.*

Form of Affidavit of Publication of said Notice.

STATE OF WISCONSIN, }
County of ———, } ss.

E. F., being duly sworn, on oath, says that he is the printer (or foreman, or principal clerk of the printer) of the ———, a newspaper printed and published weekly at the ——— in said county, and that a notice of which the annexed printed matter is a true copy, was published in said newspaper, once in each week, for six successive weeks, commencing on the ——— day of ———, 18—, and ending on the ——— day of ———, 18—.

E. F.

Subscribed and sworn to before me, this ——— day of ———, 18—, G. H., *Justice of the Peace.*

[Here affix printed copy of said notice.]

Award of compensation to owners.

notice, they shall locate and establish such site or addition for said district. They shall cause an accurate survey and description thereof to be made, and fix and award the compensation to be made to the respective owners for the same, including all damages respectively sustained by such owners by reason of such taking of said lands, and within ten days thereafter make out and sign duplicate certificates, (1) containing a statement

(1) *Form of Certificate under section 479.*

Whereas, upon application duly made by the district board of school-district number —, of the town of —, for the location and establishment for school-house site (or of an addition to a school-house site) in said district, upon the lands hereinafter described, we, the undersigned town board of supervisors of said town, did, on the — day of —, 19—, duly make out a notice, and fix therein a time and place at which we would meet to decide upon such application, and delivered such notice to the clerk of said district, to be served upon the owners and occupants of said land

Now, therefore, we, the said town board, do hereby certify that we met pursuant to said notice, at —, on the — day of —, 18—, at — o'clock in the — noon, and upon due proof of the service of said notice upon all the occupants of such lands, and upon all the owners thereof (or, upon all the owners thereof who are known and are residents of this state), at least six days previous to the day fixed for such meeting (if any owners are unknown or non-resident, say: And upon due proof of the service of said notice by the publication thereof in the —, a weekly newspaper published at —, being the newspaper published nearest said land, once in each week for six successive weeks next before the day of said meeting) and that, having so met, we located and established a school-house site (or, an addition to a school-house site) for said school district number —, comprising the following tract or parcel of land, described according to an accurate survey thereof caused by us to be made, to wit: (*Here describe the lands taken according to the survey of the same*)

And we further certify that we did (or if any adjournment is made, say: And we further certify that before agreeing upon our award in the premises, we, in our discretion, did adjourn for further action in that behalf, unto the — day of —, 18—, at — o'clock in the — noon, at —, of which adjournment, when made, public notice was duly given. And having duly met at the adjourned time and place, we did) then and there fix and award the compensation to be made to the respective owners for said land so taken, including all damages respectively sustained by such owners by reason of such taking of said lands as follows, to wit:

To A. B. on (*describe lands*) we have awarded as compensation for the land so taken belonging to him, the sum of — dollars, and as damages consequent upon such taking the sum of — dollars.

To C. D. (*in like manner*).

The owner of (*describe land*) being unknown to us, we have

of their action upon such application, an accurate description of the land taken, and the amount of compensation and damages awarded to each of said owners, one of which shall be delivered to the occupant or owner of the lands so taken, if known, and a resident of this state, and the other, together with the proofs of publication or service of said notice and such survey, to the clerk of said district, who shall cause said certificate to be recorded in the office of the register of deeds of the proper county; *provided*, that said board may, in their discretion, before agreeing upon their award, adjourn from time to time, not exceeding in all ten days.

SECTION 480. The sum of money so awarded by said board shall be paid to the owner of the land upon which such site or addition is located, or in case the owner is a non-resident or unknown or refuses to accept the money, it shall be deposited with the treasurer of the district to the order of the owner of said land; said district shall not occupy said land without the consent of the owner thereof, until such money shall be paid, tendered or deposited as aforesaid.

Money awarded to be paid owner.

Money of non-residents or those refusing it, to be deposited with district treasurer.

SECTION 481. Any person aggrieved by the decision of the town board, in the award of damages or otherwise, may, within twenty days after filing their duplicate certificate with the clerk of such district, appeal therefrom to the circuit court of any county in which such site or addition or any part thereof is situated, by filing with such clerk a notice of appeal, specifying all the grounds of his appeal, and paying to such clerk one dollar for state tax and one dollar for making return thereto. Within twenty days thereafter, such district clerk shall deliver to the clerk of said circuit court a certified copy of such certificate, together with such notice of appeal, with the date of service thereof indorsed thereon, and pay to

Persons aggrieved by award of board may appeal to circuit court.

Appeal, how made.

awarded to such unknown owner as compensation for the land, etc. (*proceed as above*).

Given under our hands this _____ day of 18—.

_____,
_____,
_____, } *Town Board.*

NOTE—The above certificate must be made and signed in duplicate *within ten days after the location of the site, etc.* One duplicate to be delivered to the occupant or owner of the lands so taken, if known, and a resident of the state, and the other, together with the proofs of publication or service of notice and the survey, to the clerk of the district.

How issues
tried.

him one dollar state tax; and thereupon the clerk of said court shall enter an action in his court record, in which the said appellant shall be plaintiff and the school-district defendant. The issues in said action shall be the legality of all the proceedings taken by the school-district and town board in taking the lands of the plaintiff for such school site or addition thereto, which are set forth in the notice of appeal as grounds therefor, and the amount of compensation and damages to which he is entitled therefor. Such issues shall be tried without further pleadings, as other issues of fact are tried, and judgment thereon be rendered and enforced as in other personal actions in such court; *provided*, that when the legality of the proceedings is not made an issue, or is sustained, and the plaintiff does not recover a larger sum for damages than was awarded to him, he shall not recover, but shall pay costs.

Amount of land
in school-house
site.

SECTION 482. No school-house site shall contain more than one acre, unless with the consent of the owner of the land taken therefor. All lands so taken against the will of the owner, when it shall cease to be used as a school-house site or addition, shall revert to the original owner, his heirs or assigns; and no lands shall be so taken that may not be taken for highway purposes, without the consent of the owner thereof.

Application by
joint district,
how made.

SECTION 483. If such application be made by a joint district, it shall be made to the town boards of the several towns in which such district is situated, and such town boards shall act together as one board in all proceedings as hereinbefore prescribed.

When site located on lands of infants, circuit court may authorize parent or guardian to execute lease.

SECTION 484. Whenever any school-district shall locate a site for a school-house upon any land owned by an infant, or in which an infant has an interest, the circuit or county court of the county in which the land is situated may, upon application of the parent or guardian of such infant, authorize such parent or guardian to execute a perpetual lease of such site, not exceeding one acre in quantity; and when any such land is held in trust for an infant, his trustee may in like manner apply for authority to make such perpetual lease. All such leases shall vest in the lessee the interest of such infant and of his trustee in such land, so long as the same is occupied for

When land held by trustee.

Leases to vest in lessee interest of infant.

school purposes. Such authority shall not be granted unless it shall be made to appear satisfactorily to said court that the premises are needed for school purposes, that the said school-district is willing to pay therefor a consideration deemed adequate by the court, and that the interest of such infant will not be prejudiced by reason of said lease; and before making such order the court shall require the person authorized to make such lease to give a bond to account for and pay over the consideration received therefor, as in cases provided by law for the sale of lands of minors.

Authority to
lease, when
granted.

LIBRARIES.

* * * * *

SECTION 486. The legal voters of any two or more adjoining school-districts may, with the approval of the town board, unite their libraries and library money, and may purchase a joint library or additions thereto for such districts, to be selected by the district boards thereof or by such person as they shall designate, and to be under charge of librarians to be appointed by such district boards. Every such joint library and its appurtenances shall be vested in, and all actions relating thereto shall be brought in the names of all the districts owning such joint library. In case such districts shall desire to divide any such joint library, such division shall be made by the directors of the districts owning the same, or by the town supervisors, if such directors cannot agree; and any school-district may donate or sell any book or books belonging to the district library, to the town in which it is situated, to form a part of the town library.

Joint libraries,
how formed.

Actions for,
how brought.

How joint
library divided.

District may
sell or give
books to town.

COLLECTION OF JUDGMENTS AGAINST SCHOOL-DISTRICTS.

SECTION 487. No execution shall issue on any judgment against a school-district, except upon leave of the court upon motion, after the failure of the remedies provided in these statutes.

Execution
against district,
when to issue.

SECTION 488. Whenever a final judgment shall be obtained against any school-district, the judgment creditor, his assignee or attorney, may file

Transcript of
judgments to
be filed with
town clerk.

55 Wis. 2169.

Town clerk
how to assess
amount of
judgment.

To be collected
as town taxes.

Judgment
against joint
district, how
collected.

On appeal
from judgment,
director to file
a certificate of
appeal.

with the town clerk a certified transcript of such judgment or of the docket thereof, together with his affidavit, showing the amount due thereon and all payments, if any, and that the judgment has not been appealed from or removed to another court, or, if so appealed or removed, has been affirmed; and thereupon the town clerk shall assess the amount thereof, with interest from the date of its rendition to the time when the warrant for the collection thereof will expire, upon the taxable property of such district, placing the same in a separate column on the next tax roll; and the same shall be collected and returned as town taxes are, and paid to the party entitled thereto. In case of a judgment against a joint district, a transcript and affidavit, as aforesaid, shall be filed with the clerk of each town in which any part of the district is situated, and the town clerk in each town shall assess on the taxable property of the part of such district situated in his town, the same proportion of the whole amount, with interest as aforesaid, as is assessed on such part for the other district taxes in such year. Such proportion may be ascertained by the certificate of the district clerk, or the certificate of the several town clerks interested to each other, showing the amount of other district taxes certified by the district clerk to each town clerk. Whenever for any cause, the amount which ought to be assessed on any such district or part of district, as above provided, shall not be so assessed in the next tax roll after the filing of such transcript and affidavit, the town clerk shall assess the same on the next or any subsequent tax roll within two years thereafter.

SECTION 489. Whenever an appeal shall be taken from any judgment against a district, and a transcript thereof and affidavit shall have been filed, as above provided, the director may file a certificate of such appeal with the town clerk; and thereupon he shall suspend the assessment of such judgment, until the determination of such appeal. If such judgment be thereafter affirmed, on proof thereof by certificate of the clerk of the appellate court, the town clerk shall assess the same, with interest, in the next tax roll.

FREE HIGH SCHOOLS.

SECTION 490. (As amended by chapter 245, Laws 1879). Any town or incorporated village or city or school-district, which contains within its limits an incorporated village, or which has a graded school of not less than two departments with not less than twenty-five pupils prepared to begin a high school course, may establish and maintain not exceeding two high schools, in the manner and with the privileges herein provided. The question of establishing such schools may be submitted by the town, school-district, or village board, or common council at any annual or duly called special meeting or election upon written resolution (1) therefor, proposed for adoption; *provided*, notice (2) of such purpose, embodying such resolution be given in the manner provided for notifying a special district meeting, town

Free high schools, how established.

How question submitted.

(1) *Form of Resolution Proposing Establishment of a High School.*

In order that the question of establishing and maintaining a high school in the town of ———, may be submitted to the electors thereof for determination, the following resolution therefor is hereby proposed for adoption:

Resolved, by the town board of the town of ———, that a high school be established and maintained in said town.

The town clerk is directed to give notice that said resolution will be submitted to a vote at the annual town meeting (or general election) to be held in said town on the ——— day of ———, 18— (or, at a special town meeting or election to be held on the ——— day of ———, 18—, which the town clerk is hereby required to call upon due notice).

Dated this ——— day of ———, 18—.

(Signatures of Board,)

(2) *Form of Notice that Foregoing Resolution will be submitted to Vote.*

Notice is hereby given to the electors of the town of ———, in the county of ———, that at a special election, which is hereby called (or at the annual town meeting or general election) to be held in said town on the ——— day of ———, 18—, the following resolution will be submitted to the vote of said electors.

Resolved, etc., (as in the foregoing); and that at said election members of the high school board will be chosen, to take their offices, if said resolution be adopted, the clerk for one year, the treasurer for two years, and the directors for three years; their respective terms of office beginning with the annual town meeting.

Dated this ——— day of ———, 18—.

—————, Town Clerk.

Vote, how
taken.

meeting, or charter election. The vote shall be taken by ballot, and canvassed according to the statutes for conducting elections in such municipality, those ballots in favor, being written or printed, "For high schools;" those opposed, "Against high school." If the resolutions be adopted, such towns, school-districts, village or city, shall constitute a high school district. But no city, incorporated village or school-district in which a high school heretofore established has been reported, recognized and aided as a free high school, shall be required to take any vote on the resolution provided for in this section, but may continue to report and to receive aid on due compliance with the law in other respects.

Towns may
unite in estab-
lishing.

SECTION 491. Two or more adjoining towns may unite in establishing and maintaining any such high school. The resolution (1) proposing the same shall be approved and submitted, and the notice (2) of election signed by at least two supervisors of each town, and the election shall be notified and conducted in each town as provided in the preceding section. Such resolution shall not be adopted unless a majority of the votes cast in each town be in favor thereof. The votes shall be can-

(1) *Form of Resolution Proposing that Adjoining Towns Unite in Establishing, etc., a High School.*

In order that the question of uniting to establish and maintain a high school in a joint high school-district, composed of the adjoining towns of — and —, in the county of —, may be submitted to the electors of said towns of A. and B., severally, for determination, the following resolution for that purpose is hereby approved and proposed for adoption:

Resolved by the town boards of the adjoining towns of — and —, in the county of —, acting together, that said towns unite in establishing and maintaining a high school in a joint high school-district to be composed of both of said towns.

(2) *Form of Notice Submitting above Resolution to Vote.*

Notice is hereby given to the electors of the towns of — and —, in the county of —, that at a special election which is hereby called (or, at the annual town meeting or general election) to be held in said towns on the — day of —, 18—, the following resolution, which has been duly approved by us, will be submitted to the vote of said electors:

Resolved, etc., (as in the preceding form); and that at said election members of the high school board will be chosen, etc., (as in form 2, under section 490.)

(Signatures of Supervisors.)

Dated this — day of —, 18—.

vassed at the first election and all subsequent elections in the several towns, as at town meetings; and the supervisors of the several towns proposing to unite shall, within one week after such elections, meet and canvass the votes and certify (1) the result to the town clerk of each town. If such resolution be adopted, the several towns so voting to unite shall constitute a joint high school-district.

SECTION 492. (As amended by ch. 245, Laws Officers. 1879.) The officers of each such district shall be

a director, treasurer and clerk, whose term of office shall be each three years, beginning with the annual town meeting, and until his successor shall have been chosen or appointed; *provided*, that at the first election the clerk shall be chosen for one year, the treasurer for two years, and the director for three years, and all of said officers may be chosen first at the same election at which the question of establishing a high school is submitted, to take their offices, if the resolution therefor be adopted. Thereafter such officers shall be elected at the annual town meeting or charter election. The votes cast shall be canvassed, and the results declared and certified, as provided in the preceding section; * * * and in all districts maintaining a graded school of not less than two departments which now constitute free high school-districts, or which shall hereafter adopt said resolution, the district board in each such district shall be the high school board; and the

Terms of office.

What to constitute free high school districts.

(1) *Form of Certified Statement by Supervisors of Election under Section 491.*

COUNTY OF ———, }
Town of ———. } ss.

We, the undersigned, supervisors of the towns of ——— and ———, in the county of ———, do hereby certify that the following is a true and correct statement of the results of an election duly held in the towns aforesaid on the ——— day of ———, 18—, at which was submitted the following resolution: (*here incorporate the resolution submitted to vote*).

The whole number of ballots deposited on said resolution in the town of ——— was (*state number in writing*), of which "for high school" received ———; "against high school" received ———.

The whole number of ballots deposited on said resolution in the town of ——— was ———, of which "for high school" received, etc. (*proceed as above*).

(*Signatures of Supervisors.*)

Dated this ——— day of ———, 18—.

district treasurer shall be the treasurer of the high school-district.

* * * * *

High school
tax.

How appor-
tioned among
towns.

How moneys
paid out.

SECTION 493. The high school board shall, annually, on or before the second Monday in September, meet and determine the amount necessary to be raised by tax for the support of such high school, and certify the same to the proper town, city or village clerk; if a joint high school-district, they shall certify to the town clerk of each town the proportionate amount thereof to be raised by such town, such proportion to be determined according to the total valuation of all the taxable property in such town as equalized by the town boards of review. Such tax shall be assessed on the next tax roll by such clerk or other officer making the same, and collected and returned as other taxes, and paid to the high school-district treasurer. Such moneys shall be paid out only on orders drawn and countersigned as prescribed in case of school-districts. Any town which is a single high school-district may, by resolution adopted at the annual town meeting, limit the amount to be raised for high school purposes in such town, during such year. In case of a joint high school-district, the town boards of the several towns embraced may, by a joint resolution adopted by all such town boards before the first day of July, likewise limit the amount to be raised in such district.

* * * * *

APPEALS.

Appeals from
decision of dis-
trict meeting
or town board.

8 Wis. 333.
12 Wis. 685.
54 Wis. 155.
60 Wis. 377.

Decision opera-
tive until re-
versed.

SECTION 497. Any person conceiving himself aggrieved by any decision made by any school-district meeting, or by any town board, in forming or altering, or in refusing to form or alter, any school-district, or by any other thing done by any officer or board under the provisions of this chapter, may appeal to the state superintendent. Such appeal shall be taken and heard in the manner prescribed by him, and he shall make and file his decision thereon within thirty days after the hearing thereof is closed. The decision appealed from shall be operative until the same shall be reversed; and no decision on appeal to said super-

intendent made by him after the lapse of thirty days from the time the hearing thereof is closed, shall be effectual.

* * * * *

MISCELLANEOUS.

SECTION 499. Every town clerk who shall neglect or refuse to make and deliver to the county superintendent his annual report as required in this chapter, within the time limited therefor, shall be liable on his official bond to pay the town the amount which such town or any school-district therein shall lose by such neglect or refusal with interest thereon; and every county superintendent who shall neglect or refuse to make the report required of him by this chapter, to the state superintendent, shall be liable to pay to each town the amount which such town or any school-district therein shall lose by such neglect or refusal with interest thereon, to be recovered in either case in an action prosecuted by the town treasurer in the name of the town. All money collected or received by any town treasurer, under the provisions of this section, shall be apportioned and distributed to the school-districts entitled thereto, in the same manner that the money lost by any such neglect or refusal would have been apportioned and distributed.

Liability of town clerk for neglect to report.

County superintendent's liability for neglect to report.

SECTION 500. Every taxable inhabitant receiving the notice mentioned in sections four hundred and thirteen and four hundred and fifteen, and every chairman of the first district meeting in any district, who shall willfully neglect or refuse to perform the duties enjoined upon him by this chapter, shall respectively forfeit the sum of five dollars.

Penalties for neglect of duty.

* * * * *

SECTION 504. In case the town board, or any other officer, shall neglect or refuse to carry into effect any decision of the state superintendent, made upon an appeal from their or his action or refusal to act, each supervisor or other officer thus refusing or neglecting shall forfeit the sum of fifty dollars; and every town clerk who shall so neglect or refuse shall also be liable to removal by the town board, upon proper notice thereof.

Forfeiture for violation of decision of state superintendent.

* * * * *

District officers
may subscribe
for Journal of
Education.

SECTION 508. Each school-district clerk and each town clerk or secretary of a town board of directors, may subscribe annually for one copy of the Wisconsin Journal of Education, to be paid for by the district or town respectively, out of the school money.

* * * * *

Women may
be elected
school officers.

SECTION 513. Every woman of twenty-one years of age, and upwards, may be elected or appointed as director, treasurer or clerk of a school-district; director or secretary of a town board, under the township system; member of a board of education in cities; or county superintendent.

* * * * *

TOWNSHIP SYSTEM OF SCHOOL GOVERNMENT.

Each town one
district.

SECTION 516. Every town which is now or may hereafter be organized in this state is hereby declared and constituted one school-district, for all the purposes in this chapter hereinafter prescribed, and the several school-districts and parts of joint districts, which are now or may hereafter be established in the several organized towns, shall be styled and known as subdistricts, whenever such town shall have voted therefor, as provided in section five hundred and fifty-two.

Subdistricts.

* * * * *

To make state-
ment of mon-
eys received
and disbursed.

SECTION 534. It shall be the duty of the secretary, at least five days before the annual town meeting or election, each year, to make to the board of supervisors of the town a written statement, showing the receipts of money for school purposes from all sources and the disbursements of the same, during the year ending on the third Monday of March, in which statement shall be given under separate heads:

1. The amount in the treasury at the beginning of the year.
2. Amount received from the state fund.
3. Amount collected by town treasurer.
4. Amount received from all other sources.
5. The manner in which such sums have been

expended, specifying the amount paid under each head of expenditure.

6. Amount remaining in the treasury.

7. Amount of indebtedness of the township district, and when and how payable.

The secretary shall accompany the above statement with estimates of the board of the amount necessary for the support of schools during the ensuing year, specifying the sums needed, under the following heads:

1. Amount for teachers' wages.

2. Amount for school-house sites, and for building, hiring or purchasing school-houses.

3. Amount for fuel.

4. Amount for incidental expenses, including repairs, maps, globes, charts, and for all needful school-room appurtenances.

5. An amount not to exceed one hundred dollars to purchase library books.

SECTION 535. It shall be the duty of the town board of each town in the state to present the statements and estimates above mentioned to the electors of the town at the annual town meeting or election, and the items of said estimates shall be passed upon separately by a vote of the electors present, but upon motion they may be increased or diminished; and if for any reason money for the support of schools shall not be voted at the annual town meeting, or a sufficient amount shall not then be voted, the supervisors shall present the estimates before mentioned to the electors, at the general election in the fall, for a vote thereon.

To give estimates, how.

Statement and estimate to be submitted to electors.

* * * * *

SECTION 538. The town clerk shall assess all sums voted at the annual town meeting or at the general election, for the support of schools, upon the real and personal property of the town as found in the assessment roll for the year, in which said money is voted, and the sums so assessed shall in all respects be collected or returned delinquent like other taxes, and when collected, the money shall be held by the treasurer, and be by him paid out on the order of the president and secretary of said board.

Town clerk to assess moneys for school purposes.

SECTION 539. If, for any reason, the electors of a town shall fail to vote an amount of money sufficient to maintain a school in each subdistrict

If electors fail to vote enough money, town clerk to assess.

for the term of five months, during the year ensuing, the secretary shall, on or before the fourth Monday of November of the year in which the electors shall fail to vote as aforesaid, certify to the town clerk the amount estimated by the board of directors necessary for teachers' wages, fuel, repair of school-houses and incidental expenses, and the town clerk shall assess the aggregate sum thus certified, upon all the taxable property of the town, in the assessment roll for that year, and the town treasurer shall collect the same as other taxes.

Town treasurer
to receive
moneys.

SECTION 540. The town treasurer of each town shall apply for and receive from the treasurer of his county all money apportioned for common schools in his town, and pay out the same, together with all money collected or received by him for school purposes, upon the order of the president and secretary of the town board of directors.

* * * * *

If subdistrict
composed of
parts of two or
more towns,
who to control.

SECTION 547. When a subdistrict is composed of parts of two or more towns, the board of directors of the town in which the school-house is situated, shall have the entire control of said subdistrict, and shall maintain school therein as in other subdistricts; and the clerk of such joint subdistrict shall be a member of the board of directors of said town. At the annual meeting in October, the board of directors shall calculate and determine the cost of maintaining the schools in said joint subdistrict, for the year ending at the close of the term, preceding the meeting of the board, and the secretary shall certify such amount to the secretary of the board of each town, embraced in part in such joint subdistrict, together with the assessed valuation of said subdistrict, and each part thereof, as found in the assessment roll of the said town for that year; on the receipt of such certificate, the secretary of the board of directors of each of said towns shall draw an order on the treasurer of his town, in favor of the town in which the school-house of said joint subdistrict is situated, for such a proportion of the whole cost of maintaining said school as aforesaid, as the assessed value of the property of his town, embraced in said joint sub-

district, is to the whole valuation thereof; unless the proportion of school-district taxes to be assessed in each such town shall have been ascertained, as provided in section four hundred and seventy-one, in which case he shall draw his order for such proportion; and said order shall be paid out of any money in the hands of said treasurer, collected or received by him for the support of schools in his town.

SECTION 548. In case either of the towns embraced in part in said joint subdistrict shall not have adopted the township system of school government, the certificate before mentioned shall be made to the clerk of said subdistrict, and it shall be his duty to incorporate the proportional sum mentioned in the preceding section, in the returns of district taxes made by him to the town clerk of the town not having adopted such system, on the fourth Monday of November succeeding the receipt of said certificate; and the said sum shall be assessed and collected with the other taxes of that part of the joint subdistrict, and shall be paid over by the town treasurer collecting the same to the treasurer of the town in which the school-house of said joint subdistrict is situated.

SECTION 549. When the school-house of a joint subdistrict is situated in a town which has not adopted the township system of school government, the taxes for the support of schools shall be raised, assessed and collected, as provided in this chapter; but if any portion of said joint subdistrict shall be embraced in a township which has adopted the town system, then the proportion of any district tax, which should be assessed upon the property of such part of said subdistrict, shall be certified by the town clerk of the town in which the school-house of said joint subdistrict is situated, to the secretary of the town board of directors of the town comprising the part of the said joint subdistrict before mentioned; and said secretary shall draw an order upon the town treasurer of his town in favor of the treasurer of the joint subdistrict for the amount of tax thus certified; and the said town treasurer shall pay the same out of any money held or received by him for school purposes.

Procedure
when towns
have not ad-
opted town-
ship system.

In such case,
how taxes
collected.

* * * * *

Exemptions
from provisions
hereof.

SECTION 551. Whenever the territory of a school-district of an incorporated village shall extend beyond the limits of such village, the whole of such territory shall remain in such district, and form a part thereof until detached by authority of law; and such district and every village containing a graded school of three or more departments shall be exempt from the provisions of this chapter relating to the township system, except as hereinafter provided.

Vote on township
system,
how taken.

SECTION 552. The legal voters of any town in the state may at any annual town meeting, or at any general election, vote upon the question of township school government. Such voting shall be by ballot, and the ballots used shall have written or printed thereon the words, "Township school government, Yes;" or the words, "Township school government, No." A separate box shall be provided for the reception of said ballots, and the votes cast shall be counted, canvassed and a record thereof made, as in case of other votes cast at such election; and if it shall appear that a majority of the ballots cast have written thereon the words, "Township school government, Yes," then the provisions of this chapter, providing for the township system, shall immediately become operative in such town; otherwise they shall have no force or effect therein. No vote shall be taken on the question of township school government in pursuance of this chapter unless notice thereof shall be given as hereinafter provided. The town clerk of any town, upon the petition (1) in writing of any ten electors of said town, shall publish, by posting in three of the most public places in said town, a notice (2) in

(1) *Form of Petition.*

To M. S., Town Clerk:

The undersigned electors of the town of ——— hereby petition that the question of township school government in said town may be submitted to the electors thereof, at the ensuing annual town meeting (or, general election).

Dated this ——— day of ———, 18—.

— — —,
— — —,
— — —,
— — —.

(2) *Form of Notice to be given by Town Clerk.*

Notice is hereby given that the annual town meeting (or, general election), to be held in said town of ———, on the

writing that the question of township school government will be submitted to the electors of said town at the ensuing annual town meeting or general election. Such notice shall be so published and posted at least ten days before the holding of any such town meeting or election; and any town having adopted the township school government, according to the provisions of this chapter, may abolish the same at any town meeting or general election, in the same manner as provided for its adoption in this section; but when the system of township school government shall be adopted, it shall continue in force two years from the date of its adoption, before the question of abolishing it shall be acted upon.

CHAPTER 354, L. 1885.

AN ACT to authorize township system of schools to borrow money from the trust funds for the purpose of building school-houses.

SECTION 1. The board of school directors of any town in which the township system of schools exists, may borrow money from the trust funds of the state for the purpose of building school-house or school-houses, and the commissioners of the public lands are hereby authorized to loan money from the trust funds of the state to the board of school directors of any town in which the township system of schools exists, upon their compliance with the following rules and regulations:

Conditions upon which trust funds may be loaned.

1st. If at an annual meeting of the electors of such town a resolution shall be voted on by ballot and adopted, authorizing the said town board of school directors to make application to the commissioners of the public lands therefor, stating the amount to be borrowed, and the time of payment.

2d. Such authorization may be given such town board of school directors by a special meeting of such electors, called in the same manner

Special meeting of electors required.

— day of —, 18—, the question of township school government in said town will be submitted to the electors thereof, a petition therefor having been presented to me, signed by ten electors of said town.

Dated this — of —, 18—. — —, *Town Clerk.*

as special town meetings are provided to be called by the revised statutes.

General law to govern in all cases.

SECTION 2. After such authorization shall be given, the whole matter of such loan, both as to amounts and time of payment, as well as all other matters pertaining to same, shall be governed and controlled by the general law governing loans from the trust funds of the state to school-districts, found in sections 261, 262 and 263, of the revised statutes, except that the application shall be made and signed by the president, vice-president and secretary of such board, and the notes given as evidence of such debt shall be signed by the same three officers. The town treasurer shall receive and receipt for the moneys received on such loan, and pay it out as other moneys belonging to such township district for the purposes as provided for in section 1, of this act (a).

CHAPTER 204, L. 1885.

AN ACT to legalize certain school taxes.

Certain school taxes legalized.

SECTION 1. Whenever any town in this state shall have attempted to adopt the township system of school government, under and pursuant to section 552, of the revised statutes of 1878, the validity of any and all taxes for school purposes, heretofore or hereafter levied and assessed in any such town, shall not be questioned in any action or proceeding heretofore or hereafter commenced, so far as the regularity of the proceeding of any such town, in the adoption of such township system of school government is concerned, unless the plaintiff shall show that he would be required to pay more than his equitable proportion of taxes; and any and all school taxes heretofore levied in any such towns, which have been voted at the annual town meeting, are hereby declared to be legal and valid, even though the provisions of section 535, of the revised statutes of 1878, shall not have been in all respects complied with.

* * * * *

Provisions for extinguishing loans.

SECTION 553. Whenever any school-district in any town, adopting the township system, shall be

NOTE. (a) Forms under this act will be furnished upon application to the land office at Madison, Wis., and are therefore omitted here.

indebted at the time of such adoption upon a loan from the state, or otherwise, such district shall remain liable for the payment of such indebtedness, and no alteration of the boundaries of such district as a subdistrict in such town shall ever be made until such debt is fully paid, except as provided in section two hundred and sixty-three. The clerk of such subdistrict shall annually certify to the town clerk the sum necessary to be raised as taxes in such subdistrict for the payment of such indebtedness, with the interest thereon in the same manner and with like effect, as the clerk of such district was required by law to certify the same, and the town clerk shall extend the amount of such taxes upon the tax roll, upon the taxable property of such subdistrict, in like manner as if the same had been certified by the clerk of such district, and the same shall be collected by the town treasurer and be applied by him exclusively to the payment of such debt.

NOTE.—School boards may borrow money from the trust funds. See Ch. 354. L. 1885, page 99, this work.

OF THE DISTRIBUTION OF THE SCHOOL FUND INCOME.

(Chapter XXVIII, R. S. 1878.)

SECTION 554. (As amended by sec. 3, ch. 124, Laws 1885). The school fund income which shall have been received up to and including the first day of June, shall be apportioned by the state superintendent between the tenth and fifteenth days of June, in each year. Such apportionment shall be made among the several counties and the several towns, specially incorporated villages and cities in each county, according to the number of children in each, over the age of four, and under the age of twenty years, as shown by the reports made to the state superintendent during the year preceding; but no apportionment shall be made to any town, village or city which shall have failed to raise by tax, during the preceding year for the support of common schools therein, a sum equal to one-half the amount of its share from the school fund income, unless the town or village board, or common council of such city so failing shall have transferred, as they are hereby authorized to do, from the general fund to the school

School fund income.

11 Wis. 418.
46 Wis. 150.

fund of the town, village or city, for such purpose, the amount of deficit in such school tax, and the town, village or city clerk, shall have filed with the state superintendent his certificate (1) showing such transfer to the school fund, and his apportionment thereof to the proper school-districts, or transfer to the board of education before the tenth day of June; and no apportionment shall be made to any city, village or town for any school-district therein, for any year during which such district shall not have maintained a common school, taught by a qualified teacher, for six months, unless the state superintendent shall be satisfied that school was so taught for three months, and the failure to maintain it for the full six months, was occasioned by some extraordinary cause and not arising from neglect or intent to avoid the legal obligation, nor to any town, village or city, nor for any school-district, reports of which, as required by law, shall not have been made and transmitted during the preceding year to the state superintendent; nor to any city for any year, the report for which shall not show that the number of children, between the ages aforesaid, residing therein, has been ascertained by an actual census taken under the direction of the board of education, or other body having the government of common schools therein, by their clerk or persons of their appointment for that purpose. Whenever a certified statement of the county clerk of any county, made to the state superin-

(1) *Form of Town Clerk's Certificate under Section 554.*

To the State Superintendent :

COUNTY OF _____, }
 Town of _____, } ss.

I hereby certify that the town of _____, in said county, raised by tax, during the year preceding the date hereof, the sum of _____ dollars for the support of common schools, being _____ dollars less than one-half the amount of its share from the school fund income; and that on the _____ day of _____, 18—, the town board thereof duly transferred from the general fund to the school fund of said town, the sum of _____ dollars, being the amount of deficit in said school tax.

And I further certify that I have apportioned the amounts so transferred to the proper districts in said town, as follows:

To district number 1, _____ dollars.

To district number 5, _____ dollars.

To joint district number 8, _____ dollars.

Dated this _____ day of _____, 18—.

— — —, *Town Clerk.*

tendent, shall not show that the amount required by law to be raised for school purposes has been directed to be raised during the year by the county board, the amount of the school fund income otherwise apportionable to such county shall be withheld and added to the capital of the school fund.

SECTION 555. The state superintendent shall certify the apportionment made as aforesaid to the secretary of state, and shall immediately give notice thereof to each county clerk and county treasurer, stating the amount apportioned to his county, and to each town, village and city therein. Upon receiving such apportionment, the secretary of state shall draw his warrant upon the state treasurer, payable to the proper county treasurer, for the total amount apportioned each county.

Apportionment to be certified to secretary of state.

SECTION 556. Whenever any officer shall omit to make, within the time fixed, any statement or report required to be made to the state superintendent, he shall notify such officer by mail or otherwise, of such omission, but the failure of the state superintendent so to do shall in no manner affect the consequences of such omission. If at any time within two years after an apportionment, in which any town, village, city or school-district was excluded upon any ground mentioned in section five hundred and fifty-four, satisfactory evidence shall be filed with the state superintendent that such exclusion was due to some mistake or omission of some officer, and that such town, village, city or school-district was legally entitled to have shared in such apportionment, the state superintendent shall certify such facts, and the amount justly apportionable thereto to the secretary of state, and notify the county clerk and treasurer of the proper county thereof. The secretary of state shall draw his warrant therefor, and the money shall be paid from the school fund income for the use of such town, village, city or school-district, as if originally apportioned.

Officer to be notified on failure to report.

Correction of apportionment.

SECTION 557. Each county treasurer shall apply for and receive the school money due to his county as soon as apportioned, and shall immediately give notice in writing of the amount apportioned to each town, village and city in his county to the treasurer and clerk thereof respectively, and shall pay the same to each such treasurer on

County treasurer to receive school moneys due county.

demand, who shall pay the same to the proper school treasurer, as provided by law. If any such town, village or city treasurer shall not demand such money before the next receipt of school money apportioned to such county, the county treasurer shall add such sum remaining in his hands to the money so next received, and distribute the same therewith and in the same proportion among the several towns, villages and cities entitled thereto in such county.

Town clerk to apportion money among districts.

On alteration or formation of district after report, how to proceed.

SECTION 558. The town clerk shall apportion all school money received from the state, and also all raised by the town, among the several districts and parts of districts within the town, in proportion to the number of children between the ages of four and twenty years residing in each, taking such number from the last annual reports of their respective clerks. But if, after the date of such reports, any district shall have been altered, or a new one formed, so as to render an apportionment founded on such annual reports unjust between any districts, the town clerk shall ascertain the number of such children by the best evidence within his reach. No money shall be apportioned to any district or part of a district unless the last annual report thereof, verified by the affidavit of the district clerk, shall show that all school money received from the state during the year ending with the date of such report, has been applied to the payment of the wages of a legally qualified teacher, and that a school has been taught in such district by such a teacher for at least five months during the year ending with the date of such report; but any time which such report shall show was spent by such teacher in attendance on an institute in the county, and given by the district board without deduction from such teacher's wages therefor, shall be included as part of such five months.

Money apportioned, not received, to be added to next apportionment.

SECTION 559. All money apportioned by the town clerk to any district or part of a district which shall have remained in the hands of the town treasurer, for one year after such apportionment, by reason of such district or part of district neglecting or refusing to receive the same, shall be added to the money next thereafter to be apportioned by such town clerk to the several

districts and parts of districts in such town, and apportioned therewith.

SECTION 560. In reckoning school months, ^{Twenty days a school month.} twenty days, as specified in section four hundred and fifty-nine, shall constitute a month, and one hundred days, five months.

OF THE COUNTY BOARD.

POWER OF COUNTY BOARD AS TO TOWNS, ETC.

(Chapter XXXVI, R. S. 1878.)

Relating to
county board.

56 Wis. 596,
601 and 624.

* * * * *

SECTION 663. (As amended by Ch. 111, Laws 1883). The county board of supervisors shall consist of the chairman of each of the several towns and the supervisor of each ward and part of ward of every city, and of each incorporated village and part of such village situated in the county; but if from sickness, or other cause, the chairman of any town board shall be unable to attend any meeting of the county board, either of the other members of such town board, to be designated by themselves (and if they shall disagree they shall decide the same by lot), shall attend such meeting and act as a member of such county board; but such member of a town board shall not be permitted to act as a member of the county board until the town clerk of such town shall certify (1)

(1) *Form of Town Clerk's Certificate under Section 663.*

To ———, County Clerk of the County of ——— :

I, the undersigned, town clerk of the town of ———, in said county, do hereby certify that ¶ at a meeting of the supervisors of said town, duly held therein, on the ——— day of ———, 18—, A. B., one of said supervisors, was duly designated to attend the meeting of the county board to be holden on the ——— day of ———, 18—, and to act as a member of said county board from said town; C. D., the chairman of said town being unable, from sickness (or other cause), to attend said meeting of the county board.

—————, Town Clerk of the Town of ———.
Dated at ——— on the ——— day of ———, 18—.

If supervisors disagree and the matter is decided by lot, say from ¶ above: C. D., chairman of said town, being unable from sickness (or other cause), to attend the meeting of the

to the county clerk the name of the (supervisor) so designated to represent said town. When the county shall consist of one town, the supervisors of such town shall constitute the county board of supervisors of such county. Nor shall any county officer, or deputy county officer be eligible to any office named in this section; provided, nothing herein shall affect the power of the county clerk under section 665, of the revised statutes.

* * * * *

SECTION 670. In addition to the general powers and duties of the several county boards enumerated in the preceding section, the following special powers are conferred upon them, subject to such modifications and restrictions as the legislature shall from time to time prescribe, to wit:

Special powers
of county
board.

35 Wis. 93.
46 Wis. 332.
50 Wis. 189.
54 Wis. 120.
56 Wis. 606, 622.
47 Wis. 384.
61 Wis. 280.

1. To set off, organize, vacate and change the boundaries of the towns in their respective counties, subject to the limitations hereinafter prescribed, designate and give names thereto, fix the time and place of holding the first town meeting therein, and make all necessary orders for the preservation of the records and papers of any town which may be vacated; but no town shall be vacated unless a majority of all the members entitled to seats in the county board shall so decide; and no county board, except in the counties of Ashland, Barron, Bayfield, Burnett, Douglas, Juneau, Marathon, Oconto, Polk and Shawano, and except as provided in the next section, shall set off, establish or organize any town, that at the time of being so set off and organized does not contain a population of at least one hundred and twenty-five inhabitants, at least twenty-five of whom shall have been actual electors of this state, and resident within the territory of the proposed new town, at least six months prior to the time such organization shall take effect.

county board, to be holden on the — day of —, 18—, a meeting of the supervisors of said town was duly held therein on the — day of —, 18—, for the purpose of designating another member of said town board to attend said meeting, and A. B. and E. F., the other supervisors, disagreeing upon the subject, duly decided the same by lot, by which lot the said E. F. was chosen and designated as the supervisor to attend said meeting of the county board and to act as a member thereof from said town, in place of the said C. D.

2. To appoint commissioners to act with similar commissioners duly appointed by any other county or counties, and authorize them to lay out or discontinue any road extending through or into their own, and one or more other counties, subject to the ratification of the board.

3. To alter, vacate or discontinue territorial or state roads within their respective counties.

4. (As amended by Ch. 110, L. 1880.) To allow bounties for the destruction of wolves, lynxes, wild cats and foxes in their respective counties.

5. To change the name of any town or village, or person resident in their respective counties.

Subdivision 6, repealed by section 6, Ch. 321, L. 1880.

7. To alter or vacate any city, town or village plat, or any part thereof, or any street or alley therein, surveyed and recorded in any such county, upon petition by the proprietor or proprietors of any such city, town or village, or any part thereof or lot therein, and upon such notice by such petitioner or petitioners, as is required in vacating town, city or village plats in the circuit court; provided, that no city plat, or any part thereof, or any street or alley therein, shall be altered or vacated without the consent of the common council of such city.

8. To grant charters to any person to build and maintain toll and free bridges in their respective counties, and to regulate the tolls thereof.

9. To incorporate literary, benevolent, charitable and scientific institutions.

10. To grant charters and confer corporate powers upon such persons or companies as they may deem expedient, to build and maintain plank or turnpike roads in their respective counties, not inconsistent with law, and to regulate the tolls thereof.

11. To grant charters for ferries to any person or corporation, and for any period of time not exceeding ten years, and to prescribe rates of ferriage. When any of the special powers and duties conferred by this section upon county boards shall be exercised by the legislature, it shall be a restriction upon the county board so far as the legislature shall exercise such power. All powers conferred upon county boards by this section shall be carried into effect by the enactment of ordi-

nances, which shall be in the ordinary form of laws passed by the legislature, and shall commence as follows:

"The county board of supervisors of the county of ——— do ordain as follows:"

12. (Ch. 207, Laws 1881, as amended by ch. 316, L. 1883.) To establish dock or wharf lines upon navigable waters in counties wherein there is no incorporated city or village; but such county board shall not have power to alter or discontinue such dock or wharf lines, except upon the petition of any owner or lessee of property fronting on such navigable waters, and affected by such dock or wharf lines, and upon such notice by such petitioner as is required in vacating town, city or village plats in the circuit court.

13. (Ch. 306, Laws 1882.) To appropriate a sum of money, not to exceed ten thousand dollars, for the erection and construction of a suitable monument to the memory of the deceased soldiers; provided, no appropriation for said purpose shall be made unless the question whether a tax for the same may be levied and collected is submitted to and agreed to by the voters of the county in the same manner as is provided for towns, cities and villages in section 937, of chapter 41, of the revised statutes (a).

14. (Ch. 155, Laws 1885.) To procure transcripts or abstracts of the records of any other county affecting the title to real estate in such county, and such transcripts or abstracts shall be *prima facie* evidence of title.

SECTION 671. (As amended by chapter 190, laws 1879,) chapter 226, Laws 1882, and chapter 287, Laws 1883.) When thirty or more freeholders, residents of any town, and at least one-third of the legal voters thereof shall petition the county board for a division of such town, (1) such

Division of town.

(a) Chapter 18, Laws of 1885 makes it the duty of the county board of each county to make provision to defray the expenses of the burial of any honorably discharged union soldier, sailor or marine who dies without leaving sufficient means to defray the expense of his burial.

(1) *Form of Petition to County Board for Division of a Town.*

To the County Board of ——— County:

The undersigned, thirty freeholders, and constituting at least one third of the legal voters of the town of ———, in

54 Wis. 114.

petitioners shall, at least twenty days before the next annual town meeting, file a copy of such petition with the clerk of such town, who shall at least ten days before such town meeting, give notice (1) that the question of a division of such town will be voted upon at such town meeting, by posting notices thereof showing the manner in which it is proposed to divide such town, in four public places in each proposed subdivision thereof. The vote shall be by ballot, and those voting in favor of a division shall vote a ballot containing the words, "for division," and those voting against a division a ballot containing the words, "against division." The voters residing in each of the proposed subdivisions shall vote separately, and if a majority of the votes cast in either subdivision shall be in favor of division, the town clerk (2) shall certify the fact

said county of —, hereby petition the county board thereof for a division of said town, so that one subdivision thereof shall embrace the following area, described by sections and parts of sections, as follows: —, and the other subdivision of said town shall embrace the following area, described, etc. (*as above*).

Dated this — day of —, 18—. (Signatures.)

(1) *Notice that Question of Division will be Voted Upon.*

Whereas thirty (or more) freeholders, residents of the town of —, in the county of —, being at least one-third of the legal voters of said town, have petitioned the county board of said county for a division of such town in manner following, to wit: One subdivision thereof to embrace (*as in petition*); the other subdivision of said town to embrace (*as in petition*); and a copy of said petition being duly filed with me, the undersigned town clerk of said town, on the — day of —, 18—, and twenty days before the next annual town meeting:

Notice is, therefore, hereby given, that the question of the division of said town, as proposed by said petition, will be voted upon at the annual town meeting to be held therein, on the — day of —, 18—.

—, Town Clerk.

Dated this — day of —, 18—.

(2) *Form of Town Clerk's Certificate of Result of Vote under Section 671.*

To —, County Clerk of the County of —:

I, the undersigned, town clerk of the town of —, do hereby certify that at the annual town meeting of said town, held on the — day of —, 18—, the question of division of said town as follows (*as proposed in petition and notice*), was submitted to a vote of qualified electors thereof, due notice of the submission thereof having been first given; that

to the county clerk, and thereupon the county board shall have power to divide such town accordingly. But no town shall be divided so as to constitute or leave any town of less than thirty-six sections according to the United States survey, unless each such town, after division, shall have real estate valued at the last preceding assessment at thirty thousand dollars or more, and twenty-five qualified voters, resident therein at the time of division; and no town shall be divided or have any part detached therefrom, so as to make its area less than thirty-six sections, as aforesaid except when a majority of the votes cast "in one or both such" subdivisions as aforesaid, shall be in favor of such division. Provided, however, that the provisions of this section shall not apply to the formation of a new town from territory taken from two or more towns, or to detaching territory from one town and annexing the same to another, upon petition of one-third of the freeholders resident within the territory to be detached, in case each such town after division, contains an area of not less than thirty-six (36) sections, as aforesaid, and real estate valued at the last preceding assessment at thirty thousand dollars (\$30,000) or more, and twenty-five qualified voters, resident therein at the time of the division.

SECTION 672. Whenever the county board shall form a new town from parts of a town or towns already organized, they shall by their ordinance of division, determine what portion of the indebtedness then legally incurred by such old towns shall be chargeable to the respective portions so

Apportionment
of indebted-
ness.

the voters residing in each of said proposed subdivisions voted separately by ballot in due form, upon said question, and that a majority of the votes cast* in each said subdivision was in favor of said division (or, if a majority of the votes in *only one* of the proposed subdivisions was in favor of the division, say from * in one of said proposed subdivisions, to wit: (*designate which*) was in favor of said division, the majority of votes cast in the other proposed subdivision being against said division.

_____, Town Clerk of the Town of _____.
Dated at _____, this _____ day of _____, 18—.

NOTE TO SECTION 670 AND 671.— The provisions of 670 and 671, R. S., prescribing the form in which orders and the terminations of a county board for changing the boundaries of towns shall be made and requiring their publication are *mandatory* and must be substantially complied with to effect such a change. (*Smith v. Sherry*, 54 Wis. 114).

detached to form such new town; and such new town shall pay the proportion of such indebtedness so declared chargeable to such detached portions, at such time as the same shall become payable; and for that purpose the town board of such new town shall levy a tax upon all the taxable property of such portions thereof so chargeable therewith. The county board, in fixing the proportion of indebtedness chargeable to the detached portions, shall divide such indebtedness, *pro rata*, according to the last assessment rolls of such old towns.

CHAPTER 334, L. 1885.

Providing for
procuring pub-
lic records.

SECTION 1. When any territory shall be detached from any county, town, village, city or school-district in this state and annexed to any other county, town, village, city or school-district therein, or any new county, town, village or school-district shall be in whole or in part created from such territory so detached, it shall be the duty of the proper officer of such county, town, village, city or school-district to which said territory so detached shall be annexed, or which shall be created therefrom, to demand from the proper officer of the county, town, city, village or school-district having custody of the public records of the territory so detached, a transcript of all public records pertaining to said territory, and it is made the duty of such officers, from whom they shall be demanded, to furnish duly authenticated transcripts of all such records in his office which shall be paid for after they shall be so furnished, by the county, town, city, village or school-district to which said territory so detached shall be annexed or which shall be created therefrom.

Where territory
shall be de-
tached.

SECTION 2. When any territory shall be detached from any county, town, city, village, or school-district in this state, and the same shall be annexed to any other county, town, city, village or school-district therein, or any new county, town, city, village or school-district shall be in whole or in part created from such territory so detached, the county, town, village, city or school-district to which the same shall be annexed, or which shall be in whole or in part detached therefrom, shall be liable to the county, town, city, or

village or school-district from which the territory was so detached for its just share of the liabilities and indebtedness, and shall receive the just share of the credits from the county, town, village, city or school-district from which the same shall have been detached, which shall be apportioned by ascertaining what ratio the portion detached bears to the territory from which the same was detached, and the last prior assessment shall be used as the basis in determining the same.

SECTION 3. When any territory shall be detached from any county, town, city, village or school-district in this state, it shall in no manner invalidate or interfere with the collection of taxes in such territory, but they shall be collected and the returns made, the same as if the territory was not detached therefrom.

Shall not invalidate title.

8—T. L.

OF TOWNS.

OF THE POWERS, DUTIES AND LIABILITIES OF TOWNS.

(Chapter XXXVIII, R. S., 1878.)

Towns, corporate bodies.

6 Wis. 850.
12 Wis. 93.
17 Wis. 896.
24 Wis. 832.
31 Wis. 120.
40 Wis. 682.
56 Wis. 605.

Conveyances, to towns.

SECTION 773. Each organized town is and shall be a body corporate, and empowered to sue and be sued; to purchase, take and hold real and personal property for public uses, and convey and dispose of the same; and to make all contracts necessary and convenient for the exercise of its corporate powers, and any order for the sale or disposal of its corporate property which the inhabitants thereof may deem expedient. It shall be designated in all actions and proceedings by its name, as "town of ——" (a).

SECTION 774. All real and personal estate conveyed, or which shall be conveyed to any town, or to the inhabitants thereof, or to any person for the use of the town or its inhabitants, shall be

(a) The several organized towns in this state are not municipal corporations in the sense in which that term is used in section 2, of article 11, of the constitution, which provides that "no municipal corporation shall take private property for public use against the consent of the owner, without the necessity thereof being first established by the verdict of a jury." [*Norton v. Peck*, 3 Wis. 714.] Towns are restricted in their acquisition of real estate, to property within their own boundaries. [*Milwaukee v. City of Milwaukee*, 12 Wis. 93.] But where the legislature takes from a town a portion of its territory which includes lands to which it has the exclusive title, and annexes the same to another town or municipality, without providing for the disposal of such land, under such circumstances that the assent of the town to part with its title cannot be presumed, such town still continues to be the owner of such land, notwithstanding such separation. [*Id.*]

Towns not authorized to purchase or own tax certificates. [*Eaton v. Sup's Manitowoc County*, 44 Wis. 489.]

"By general principles of law, as well as by judicial construction of statutes, if a part of the territory and inhabitants of a town are separated from it, by annexation to another, or by the erection of a new corporation, the remaining part of the town, or the former corporation, retains all its property, power, rights and privileges and remains subject to all its obligations and duties, unless some express provision to the contrary should be made by the act authorizing the separation." [*Town of Deperre et al. v. Town of Bellevue et al.*, 31 Wis. 120.]

A sufficient and convenient room for all election and town meeting purposes is a "public use," for which the town may purchase and hold a site and erect a building, making all necessary contracts to that end, and a town may also lease buildings for those purposes. [*Town of Beaver Dam v. Frings*, 17 Wis. 898.]

A contract by a town for a lease of such property, with a stipulation to pay the rent by allowing the lessor the use, during the term, of a certain sum then in the treasury, designed for purchasing or erecting a town-house, or not devoted by law to any specific purpose, is valid. [*Id.*]

The fact that a contract in behalf of a town is executed by but two supervisors does not invalidate it. [*Id.*]

deemed the property of such town; and all such conveyances shall have the same force and effect as if they had been made directly to the town by name.

SECTION 775. Whenever any real estate belonging to a town, shall be sold in pursuance of any order of the town, the conveyance thereof shall be executed by the town clerk in his official capacity, under his hand and seal, and such conveyance, duly witnessed and acknowledged, shall convey to the grantee therein named, all the right, title, interest and estate which the town may then have in and to the real estate so conveyed (1).

Sale of real
estate of towns.

(1) *Form of Conveyance of Real Estate of Town.*

This indenture made and entered into this — day of —, A. D. 18—, between the town of —, in the county of —, party of the first part, and C. D., of —, in said county, party of the second part, witnesseth, that,

Whereas, the electors of the said town of — did, at a meeting duly called and held therein, on the — day of —, A. D. 18—, duly order that the real estate hereinafter described, belonging to said town, be sold and conveyed to the said party of the second part for the sum of — dollars (or, did order that the real estate hereinafter described, belonging to said town, be sold at the best price which could be obtained therefor at private sale, and said C. D., party of the second part, has offered to pay for said real estate the sum of — dollars, which is the best price obtainable therefor at private sale:

Now, therefore, the said town of — does, by these presents, in consideration of the sum of — dollars, to it paid by the said party of the second part, the receipt whereof is hereby acknowledged, grant, bargain, sell and convey unto the said party of the second part, and to his heirs and assigns forever, the following described real estate, lying and being in the county of —, and state of Wisconsin, to wit: (*describe same*), together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining.

To have and to hold all the above granted premises, together with the appurtenances, and every part thereof, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, I, A. B., town clerk of the town of —, have executed this deed pursuant to the order of said town, and in virtue of the authority vested in me by the statutes of the state of Wisconsin, and for and on behalf of said town, and have hereunto subscribed my name officially and affixed my seal, this — day of —, A. D. 18—.

Signed, sealed and delivered in presence of

A. B., [Seal.]

Town Clerk of the Town of —.

STATE OF WISCONSIN, }
County of —, } ss.

Personally came before me, this — day of —, 18—, the above named A. B., town clerk of the town of —,

Powers of town meetings.

23 Wis. 362.
25 Wis. 443.
56 Wis. 669.

To vote money for roads and bridges.

58 Wis. 151.

In respect to actions.

59 Wis. 17 & 791.

To establish police regulations.

17 Wis. 446.
28 Wis. 362.

SECTION 776. The qualified electors of each town shall have power at any annual town meeting:

1. To vote to raise money for the repair and building of roads and bridges, or either; for the support of the poor, and for defraying all other proper charges and expenses of the town; subject, however, to the limitation, as to amount of highway taxes, provided in section twelve hundred and forty (a).

2. To direct the institution and defense of all actions in which the town is a party, or interested (b), to employ all necessary agents and attorneys for the prosecution or defense (c) of the same, and raise such sums of money for that purpose as they may deem proper.

3. To make such orders and by-laws for the management of all the affairs of the town as they may judge conducive to the peace, welfare and good order thereof, and as shall be necessary to restrain drunkenness or disorderly conduct, and such orders and by-laws restraining cattle, horses, sheep, swine and other animals from going at large on the highways, as they may deem proper, and fix penalties for violation of said orders and by-laws, not exceeding ten dollars for any one violation thereof; and by such orders and by-laws, to provide for the impounding and sale of any animals so going at large contrary thereto (d). No

in said county, to me known to be the person who executed the foregoing (or within) instrument, and acknowledged the same.

D. E., *Justice of the Peace.*

(a) The electors of a town, at their annual town meeting, may empower a committee of their own number (not the town supervisors), to examine and, at their discretion, either repair or rebuild a bridge; and without voting any definite sum, may direct the expense of such improvement (after being audited and allowed by the supervisors) to be assessed and collected with the next annual town tax. [*Rockford v. Woodford*, 25 Wis. 443.]

(b) Express authority from the electors is not necessary to enable the supervisors to defend an action against their town or to take an appeal. [*Haner v. The Town of Polk*, 6 Wis. 350.]

(c) The electors at a town meeting may direct the withdrawal of an appeal from the judgment of the circuit court in a proceeding by mandamus against the supervisors of the town, *eo nomine*. [*State ex rel. Mitchell v. Supervisors*, 58 Wis. 29.]

NOTE. — Express authority from the electors of the town is necessary to sue out a writ of *certiorari* to review proceedings of commissioners of equalization, appointed under the provisions of Chap. 291, Laws, 1880. [*State ex rel. Town of Manitowoc v. County Clerk*, 59 Wis. 15.]

(d) Every man is bound, upon peril of being accounted a trespasser, to keep such animals as are the subject of absolute property upon his own soil.

If swine or other animals, depasturing in the highway, break into an adjoining close, though the fence be defective, the owner is liable, and it mat-

order or by-law shall take effect before the same shall be published by posting up copies in three of the most public places in the town, and such by-laws and orders, when so published, shall be binding upon all persons coming within the town, as well as upon the inhabitants thereof, and shall be in force until altered or repealed at some subsequent town meeting.

4. To vote by ballot to establish a town library for the use of the people thereof. In taking such vote, the electors voting in favor thereof shall vote a separate ballot containing the words, "for a town library," and those voting against, a separate ballot containing the words, "against a town library;" and when established, to make all by-laws, rules and regulations for the management thereof, and raise a sum not exceeding one hundred and fifty dollars in any one year for the purpose of purchasing books, furnishing a place to keep such library and paying the librarian for his services, to be expended under the direction of the town board.

To establish
town libraries.

5. To direct the compromise or settlement of any legal indebtedness, outstanding bonds or other obligations, or of any suit or controversy existing against such town, and to provide how the money necessary for that purpose shall be raised, and for that purpose may authorize the town board to issue the bonds or obligations of such town, not exceeding the amount of such indebtedness, and to negotiate the same either directly in settlement of such indebtedness, or in raising money to settle and pay the same (1) (b).

To compromise
indebtedness.
50 Wis. 231.

ters not, whether there is or is not a town regulation restraining such animals from running at large. In the absence of such regulation they are not to be deemed free commoners.

The public have the full right of passage along and over the highways, but have not the right of pasturage therein. (*Harrison v. Brown*, 5 Wis. 27.)

(1) *Form of Order or Resolution Directing Compromise or Settlement and Authorizing Issue of Bonds therefor.*

Notice of their intention to present the proposition embodied in the following order (or, resolution) having been by the town board of the town of — first duly given, and said order (or, resolution) having been first publicly read to this meeting, it is hereby ordered (or, resolved) by the qualified

(b) The town board has no power to satisfy a judgment in favor of the town in whole or in part, without full payment in money or its equivalent, of the judgment or part satisfied. *Town of Butternut vs. O'Malley*, 50 Wis. 320.

To support destitute soldiers.

6. To raise such sums of money not exceeding one hundred and fifty dollars for each person to be supported, for the purpose of supporting destitute soldiers and their families; and the money so raised shall be distributed by the town board in such manner as they shall think fit.

Bonds for bridges.

7. To authorize the town board to issue and negotiate bonds of the town, not exceeding five thousand dollars in the aggregate, for the purpose of defraying the expenses of building any bridge over any stream in such town, when the cost thereof shall exceed the sum of two thousand dollars (1). Such bonds may be made payable at

electors of said town of —, duly assembled in annual town meeting held this — day of —, 18—, that the town board of said town be and is hereby directed to compromise (or settle) *(here specify particularly the indebtedness, outstanding bonds, judgments, claims or controversies)*, at the sum of — dollars, and for that purpose the said town board is hereby authorized and empowered to issue the bonds of the town for the sum of — dollars (not exceeding the amount above stated), which bonds shall be of denomination of — dollars each, and shall be payable — years after the date thereof at *(specify place)*, with interest at the rate of — *(not exceeding eight)* per centum per annum, payable annually *(or at the periods agreed upon)*, at — *(specify place)*; that said bonds shall be negotiated *(state in what manner, whether by sale or directly in settlement or otherwise)* by the said town board, and that the said town board be and it is hereby directed to levy a direct annual tax sufficient to pay the interest upon said bonds as it falls due, and to pay the principal thereof within the time fixed therefor.

NOTE—If more than one suit or claim is directed to be compromised or settled, the amount at which each is compromised or settled should be separately stated, and the aggregate amount must also be stated.

(1) *Form of Order or Resolution authorizing Issue of Bonds to defray Expense of Building Bridge, under Subdivision 7.*

Notice of their intention to present the proposition embodied in the following order (or, resolution) having been by the town board of — first duly given, and the said order (or, resolution) having been first publicly read to this meeting, it is hereby ordered (or, resolved) by the qualified electors of said town of —, duly assembled in annual town meeting, this — day of —, 18—, that the town board of said town be and it is hereby authorized to issue and negotiate the bonds of said town for the sum of — *(not exceeding in the aggregate five thousand)* dollars, for the purpose of defraying the expense of building a bridge over — *(describe stream)*, at — *(describe place)* in said town, the cost of which said bridge will exceed the sum of two thousand dollars. Said bonds shall be of denomination of — dollars each, and shall be payable — years *(not exceeding five)* after the date thereof, at — *(specify place)*, with interest at the rate of — *(not exceeding eight)* per centum per annum, payable annually on the — day of — *(or at time agreed upon)*

different times, not however to exceed five years from the date thereof, with interest. The powers conferred by subdivisions five and seven shall not be exercised at any such town meeting unless the town board shall have given notice of their intention to present the proposition to such meeting, as is required in case of special town meetings, nor unless a resolution or order to be voted upon, containing the particulars required by the next section, shall be first publicly read to such meeting before the vote shall be taken (1).

8. To vote by ballot upon the question of erecting landmarks at section corners and quarter stakes, due notice thereof having been given as provided by law, as in case of special town meetings. In taking such vote, the electors voting in favor thereof shall vote a separate ballot containing the words, "for landmarks," and those voting against, a separate ballot containing the words, "against landmarks."

To erect landmarks.

9. To vote upon the question of collecting the highway taxes in money; and in case it shall be decided by such vote, to collect such taxes in money, such taxes for that year, and until such vote shall be rescinded, shall be collected and paid into the treasury at the same time and in the same manner as other town taxes.

To vote to collect highway taxes in money.

10. To vote by ballot upon the question of raising money to purchase or build a town hall or

To vote to erect public buildings.

17 Wis. 398.

at ——— (specify place); and the said bonds shall be negotiated by the said town board (state how, whether directly in payment for construction of bridge, or by sale, or otherwise), and the said town board is hereby directed to levy a direct annual tax sufficient to pay the interest upon the said bonds as it falls due, and to pay the principal thereof within the time fixed therefor.

NOTE.—The bonds issued for the construction of a bridge cannot run longer than five years, and may be made payable at different times.

(1) *Form of Notice by Town Board of Intention to Present Proposition.*

To the qualified electors of the town of ———: —

The undersigned town board of said town hereby give notice, that at the annual town meeting in said town to be held on the ——— day of ———, 18—, they intend to present to such meeting the following proposition (give in shape of proposition, the substance and form 1, under subd. 5, or form 1, under subd. 7, as the case may be).

— — — — — }
— — — — — } Town Board.
— — — — — }

other building for the use of the town, or of so raising money for the purpose of uniting the same with the money of any other legal corporation or society, doing business or located in such town, for the purpose of building or purchasing such hall or other building; but no such vote shall be taken at any town meeting, unless a request (1) in writing signed by at least twelve freeholders of such town shall have been delivered to the town clerk, twenty days before the holding of such meeting, asking that such proposition be submitted to a vote of the electors of the town, at such town meeting, and setting forth the amount of money which they desire shall be raised by the town for that purpose, and whether the same shall be raised by a direct tax or the issue of the bonds of the town; and if the proposition be to issue town bonds, it shall state the denomination thereof; the time and place of the payment of the principal and interest, and the manner in which and by whom the same shall be negotiated; and if to be raised for the purpose of uniting the same with the money of some other legal corporation or society, the name of such corporation or society; nor unless the town clerk shall have given notice as is required in the case of a special town meeting, that such proposition would be voted upon at such meeting (a). In taking such vote, the elect-

(1) *Form of Request under Subdivision 10, Section 776.*

To the town clerk of the town of ———:

The undersigned freeholders of said town of ———, hereby request that there be submitted to the vote of the electors of said town, at the annual town meeting therein to be held on the ——— day of ———, 18— (or at a special town meeting called for that purpose), the following propositions, viz: That said town raise the sum of ——— dollars to purchase, (or) build a town-hall, or other building for the use of the town, specifying it ———, or, (raise the sum of ——— dollars for the purpose of uniting it with the money of the ———) (naming the corporation or society), for the purpose of building, (or, purchasing a town-hall or other building), and that said sum be raised * by a direct tax upon the taxable property of said town.

Signatures.)

(If the proposition be to issue town bonds under subdivision 10, pursue the above form to the *, then continue), by the issue of town bonds to the amount aforesaid; said bonds to be of the denomination of ——— dollars each, and payable ——— years after date thereof, at ——— (specify place), with interest at the rate of ——— per centum per annum, payable annually (or at the period proposed) at ——— (specify place); the said bonds to be negotiated by the town board of said town in the manner following (state how).

(a) See form of notice of special town meeting under section 789.

ors voting therefor shall vote a separate ballot, containing the words, "for raising money to build a town-hall," and those voting against, a ballot containing the words, "against raising money to build a town-hall." (1)

11. To authorize the town board to sell and convey any real or personal property belonging to the town, not donated to and required to be held by the town for a special purpose. To sell property.

12. To instruct by vote the town board to purchase grounds for a town cemetery; to limit the price to be paid, and to raise a tax for the payment. To purchase cemetery grounds.

SECTION 777. No bonds shall be issued by any town, when the power to issue the same depends upon a vote of the electors of such town, except in pursuance of a resolution or order duly adopted by the electors of such town, at an annual or special town meeting, at which such town is authorized by law to order the issue of the same; nor, unless such resolution or order shall provide the total amount of bonds to be issued, the denomination thereof, the time and place of payment of the principal and of the interest, which shall not in any case exceed eight per centum per annum, and the manner in which, and by whom the same shall be negotiated; and shall also provide for a direct annual tax, sufficient to pay the interest as it falls due, and to pay the principal within the time fixed therefor. All such bonds shall be signed by the chairman of the town and Issue of bonds.

(1) *Form of Order Authorizing the issue of Bonds for Building Town-Hall.*

A proposition for the issue of town bonds of the town of _____ to the amount of _____ dollars, for the purpose of (as stated in preceding form) having been duly submitted to the annual (or, special) town meeting of said town held on this _____ day of _____, 18—, and having been voted upon by ballot, and a majority of such ballots having been duly cast in favor of such proposition, it is therefore ordered (or resolved) that the town board be, and it is hereby authorized and empowered to issue, for the purpose aforesaid, the bonds of said town for the sum of _____ dollars, which bonds shall be (proceed as in Form 1, under subdivision 5).

NOTE.—It seems that the proposition or request should contemplate the negotiation of the bonds by the town board, and that the town board should be authorized by the order or resolution to negotiate the same. While subdivision ten and section 777, leave it discretionary as to whom the bonds shall be negotiated by, section 779, provides that "if the vote was to raise the money by issuing the bonds of the town, then said town board shall have power to issue and negotiate such bonds," etc.

by the town clerk in their official capacities. The provisions of this section shall not apply to bonds issued by any town in aid of railroads.

Payment of
bonds.

SECTION 778. For the punctual payment of the principal and interest of such bonds, the faith of every town issuing the same shall stand irrevocably pledged, and the tax provided therefor shall be incapable of repeal, and shall be annually collected in addition to all other taxes and kept as a separate fund and applied to that sole purpose. The town may in any year raise a greater sum than may be necessary to the payment of such principal and interest as above provided, and apply the same to the purchase and discharge of such bonds at the lowest practicable price.

To raise
money to buy
in bonds.

To erect and
control build-
ings.

SECTION 779. Whenever any town shall have legally voted in favor of raising money for the purpose of purchasing or building a town-hall or other buildings for the use of such town, the town board shall have power to make all necessary contracts for the purchase or building of the same, and shall have the care, control and management of the same when purchased or built; and whenever any town shall have legally voted in favor of uniting the money of the town with the money of any other corporation or society for such purpose, the town board shall enter into a written contract with such corporation or society to pay all extra expense by reason of such building being built larger or more expensive for the benefit of such corporation or society, and provide that in any case said corporation or society shall pay one-half the costs of such building; and such town board shall not in either case incur any liability on the part of the town for such building in excess of the sum voted for that purpose. The supervisors and town clerk of such town, and three directors or trustees of such corporation or society, shall be a board of directors, who shall have the control and management of such building, make all contracts for the purchase or erection thereof, and all rules and regulations as to the occupancy, keeping in repair, and insurance of the same. The town board shall, if the vote was to raise the money by tax, cause the sum so voted to be levied and collected as other town taxes; and if the vote was to raise the money by issuing the bonds of the town, then said

town board shall have power to issue and negotiate such bonds in the manner set forth in the resolution adopted for that purpose.

SECTION 780. Whenever any organized county shall not be divided into towns, it shall for the purposes of town government be considered as one town, and may elect town officers, including justices of the peace, at the same time and in the same manner as they are elected in towns; whose powers and duties shall be the same as town officers and justices in other towns.

When county
considered a
town.

56 Wis. 596, 601.

SECTION 781. When a final judgment shall be recovered against a town, or against any town officer in an action by or against him, in his name of office, when the same should be paid by the town, the judgment creditor, his assignee or attorney, may file with the town clerk a certified transcript of such judgment, or of the docket thereof, together with his affidavit showing the amount due thereon, and all payments made, if any, and that the judgment has not been appealed from, or removed to another court, or if so appealed from or removed, has been affirmed; and thereupon the town clerk shall assess on the next tax roll the amount thereof, with interest from the date of such judgment to the time when the warrant for the collection thereof will expire, upon the taxable property of said town, and the same shall be collected and returned as other town taxes, and when collected shall be paid to the party entitled thereto (a), but if such judgment be appealed from according to law before any part of such tax shall have been collected, such tax shall not be collected on such tax roll. No execution shall issue on any such judgment, except by leave of the court on motion, after failure of the remedy provided in this section.

Judgments
against town of
officer.

20 Wis. 87.
21 Wis. 387.
34 Wis. 169.

(a) The amount of a judgment against a town when collected by the town treasurer under section 781, is payable by him to the judgment creditor. No order from the town board to make such payment is necessary. [*State ex rel. Mills v. Kuperl.* 21 Wis., 387.]

Under Ch. 143, Laws of 1871, the town clerk derived his authority for inserting in the tax roll the amount of a judgment against the town, from an order of the supervisors, and the judgment creditor was not entitled to this order unless a written request therefor, with notice of the rendition of such judgment, was served upon the supervisors sixty days before the tax roll was made out and placed in the hands of the town treasurer for collection [*State ex rel. Burns v. Supervisors Town of Elba*, 34 Wis. 169]; but section 781 above, dispenses with the intervention of the supervisors, and with any notice to them, and makes it the duty of the town clerk, upon the filing with him of transcript of judgment with affidavit, etc., to "assess on the next tax roll the amount thereof."

TOWN MEETINGS.

Annual town meeting.22 Wis. 114.
28 Wis. 92.

SECTION 782. There shall be an annual town meeting in each town on the first Tuesday of April. At such meeting there shall be an election of such officers as are required by law to be elected; and such other business shall be done as is by law required or permitted to be done at such meeting; and no notice of holding any annual town meeting need be given (b).

Where held.

22 Wis. 114.

SECTION 783. The annual town meetings in each town shall be held at the place where the last town meeting was held, or at such other place therein as shall have been ordered at a previous meeting, or when there has been no such previous meeting, at such place as shall be directed in the act or proceedings by which the town was organized. When twelve electors shall file with the town clerk, at least four and not more than six weeks before any annual town meeting, their

(b) The following general propositions have been announced by the Supreme Court for the government of town meetings (*where the method of procedure is not expressly provided by the statute, in which case the method prescribed should of course be followed*):

1. "With the exception of the election of those officers which the statute prescribes shall be elected by ballot, all, or nearly all, of the functions of a town meeting, are such as pertain to a deliberative body or assembly." [*State ex rel. Bruce v. Davidson. 32 Wis., 114.*]

2. The subjects upon which a town meeting may take action are numerous and diversified. The course of procedure which is to be pursued is not fully marked out by statute, and it is quite safe to say that *when the statute does not give direction*, the general rules of parliamentary law, so far as they may be applicable, should be observed and enforced in conducting the business of a town meeting. [*Id.*]

3. Propositions upon which the town meeting may lawfully act, may be (except where otherwise provided by statute) submitted to it by a motion or resolution, or in the form of proposed by-laws or orders, by any elector of the town, for the consideration of the meeting. [*Id.*]

4. The chairman of the meeting cannot prevent action upon any subject within the powers conferred by law upon the meeting, by neglecting or refusing to present the same to the meeting for its action.

5. Any of the propositions before mentioned are open for discussion or amendment and may be adopted or rejected by the meeting, or adopted in part and rejected in part; and the action of the meeting thereon may be reconsidered, if a motion to reconsider be made within one hour after the vote was taken. [*Id.*]

6. Unless otherwise ordered by the meeting, the vote upon any such proposition should be taken *viva voce*, or by a division. It is probable that the meeting has the power to direct the vote to be taken by ballot; but before it can properly do so, reasonable opportunity ought to be given the electors to amend and perfect the proposition; the same should be voted upon separately; and the result of the ballot must be ascertained and declared in time to give any elector an opportunity to move a reconsideration of the vote. [*Id.*]

A town meeting is an *election*, within the general meaning of that word. Where an act provides that a town may vote upon the issuing of bonds for payment of stock in a railroad company at any annual election, or at a special election, the vote may be taken at a town meeting, and the polls of such election kept open until sundown, instead of closing them at 5 P. M., the hour for closing the polls at a town meeting. [*Phillips v. Town of Albany, 28 Wis. 340.*]

written request (1) that the place of holding the annual town meeting be decided by ballot, he shall within one week after the filing of such request, post notices (2) in at least four public places in said town, stating that the place of holding the annual town meeting will be decided by ballot at the town meeting then about to be held. Each elector may vote a ballot, designating thereon a building or public hall, within said town, which ballots, at the close of the polls, shall be canvassed, and the result certified and recorded. The place receiving the largest number of ballots shall be established as the place for holding the annual town meeting for the ensuing year, and until otherwise ordered.

SECTION 783a. (Ch. 162, Laws 1883.) It shall be lawful for any town in the state of Wisconsin to hold all elections, town meetings and the meeting of the board of supervisors for auditing accounts, equalizing taxes and other legal meetings of said board at, and in any incorporated village or city which is within or adjoining any town in this state.

Elections in
villages and
cities.

SECTION 784. Whenever it shall become impossible or inconvenient to hold a town meeting at the place designated therefor, the town board of inspectors, or a majority of them, after having assembled at or as near as practicable to such place, and opened the meeting, and before receiv-

When may ad-
journ to an-
other place.

19 Wis. 634.

(1) *Form of Request that the Place of Holding Annual Town Meeting be decided by Ballot.*

The undersigned, electors of the town of ———, hereby request that the place of holding the annual town meeting be decided by ballot, at the annual town meeting therein to be held on the ——— day of ———, 18—.

Dated this ——— day of ———, 18—.

(Signatures.)

(2) *Form of Notice to be given by Town Clerk.*

To the electors of the town of ———:

The written request therefor of twelve (or, more) electors of said town having been duly filed with the town clerk thereof, notice is hereby given that the place of holding the annual town meeting of said town will be decided by ballot at the annual town meeting to be held therein on the ——— day of ———, 18—.

Dated this ——— day of ———, 18—.

———,
Town Clerk.

ing any votes, may adjourn such meeting to the nearest convenient place for holding the same, and at such adjourned place forthwith proceed with the meeting. Upon such adjournment, the board of inspectors shall cause proclamation (1) thereof to be made, and shall station a constable or some other proper person, at the place where such meeting was opened, to notify all electors arriving at such place that the meeting has been adjourned, and the place to which it has been adjourned.

Adjournment
of.

19 Wis. 624.

SECTION 785. Any annual or special town meeting may be adjourned to any other day, and from time to time, for the purpose of transacting any business of the town, except for the election of town officers.

The first meet-
ing in new
town.

SECTION 786. The first town meeting in any newly organized town shall be held on the day of the annual town meeting next after its organization; but if the inhabitants of any such town shall fail to hold their first town meeting on the day of the annual town meeting, any three qualified voters of such town may call a town meeting for such town at any time thereafter, by posting up notices (2) thereof at not less than three public places therein, at least ten days previous to the holding of such meeting.

Proceedings at
first meeting.

SECTION 787. The qualified electors present at such first town meeting, between the hours of nine and ten o'clock in the forenoon, shall choose one of their number as chairman, two others as inspectors and one as clerk, who shall severally

(1) *Form of Proclamation of Adjournment of Town Meeting.*

Hear ye! hear ye! hear ye! This town meeting is hereby adjourned (*state place adjourned to*), at which place the said meeting will forthwith be proceeded with.

(2) *Form of Notice of First Town Meeting in Newly Organized Town.*

The inhabitants of the town of —, newly organized, having failed to hold their first town meeting on the day of the annual town meeting, the undersigned, three qualified voters thereof, hereby call a town meeting for said town, and give notice that the same will be held at (*state the place*), on the — day of —, 18—, at (*nine*) o'clock in the forenoon.

(*Signatures*).

Dated this — day of —, 18—.

take and subscribe the oath (1) required of inspectors and clerks of general elections; such oath may be administered by the chairman chosen, to the other inspectors and clerk, and either of the other inspectors may thereafter administer the oath to the chairman. They shall thereupon conduct the proceedings of such meeting; and the electors shall possess the same powers as at other annual town meetings.

SECTION 788. Special town meetings may be held for the purpose of choosing town officers to fill vacancies that may occur, and for the purpose of transacting any other lawful business, which might be done at the annual meeting, on a request being made to the town clerk in writing, signed by twelve qualified voters of such town, specifying in such request the purposes for which such meeting is to be held (2)

Special meetings.

58 Wis. 294.
61 Wis. 399.

SECTION 789. The town clerk with whom any such request shall be left, shall record the same, and immediately cause notices to be posted up in three of the most public places in the town, giving not less than fifteen nor more than twenty days' notice of such meeting. Such notices shall specify particularly the purposes for which such meeting is to be held, and if vacancies in office are to be

Clerk to record request and to give notice.

25 Wis. 447.
58 Wis. 294.
61 Wis. 399.

1) *Form of Oath to be Subscribed by Clerk and Inspectors under Section 787.*

I, A—— B——, clerk (or inspector) of election in the town of ——, county of ——, do hereby solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of the state of Wisconsin, and will perform the duties of clerk (or inspector) of election according to law, and will studiously endeavor to prevent all fraud, deceit or abuse in conducting the same. So help me God.

A—— B——, (Clerk or Inspector).

Sworn and subscribed before me, at ——, this —— day of ——, 18—.

C—— D——, Justice of the Peace or Notary Public.

(2) *Form of Request for Special Town Meeting.*

To ——, town clerk, town of ——, county of ——:

SIR:— You are hereby requested by the undersigned, twelve qualified voters of said town, to call a special town meeting for the purpose of (here state particularly the purposes for which such meeting is to be held).

(Signatures).

Dated at ——, this —— day of ——, 18—.

filled, in what office they exist, how they occurred, and who were the last incumbents; and if it be in the office of justice of the peace, at what time the legal term of office will expire; and if there be a newspaper printed in such town, he shall publish a copy of such notice therein at least five days before the time appointed for such meeting (1) (a).

Who to preside
at town meet-
ings.

SECTION 790. The chairman of the town shall be chairman of the town meetings when present, but if absent, one of the other supervisors of the town shall serve as chairman; but if no one of the supervisors be present, the qualified electors at such meeting may choose a chairman.

Supervisors to
be inspectors of
election.

SECTION 791. The supervisors of each town shall be the board of inspectors of election at the town meetings thereof; but if there be any vacancy in said board, or any supervisor be absent, the electors may choose, from the qualified electors of the town, inspectors to fill their places, who shall be authorized to act as inspectors of such election.

Chairman to
decide ques-
tions of order.

SECTION 792. The chairman of each town meeting shall regulate its proceedings, decide all questions of order and make public declaration of all votes passed; he shall possess authority to enforce obedience to his lawful requirements; and if any

(1) Form of Clerk's Notice for Special Town Meeting.

SPECIAL TOWN MEETING.

Notice is hereby given to the electors of the town of —, in the county of —, that a special town meeting will be held in said town at — (*designate place*), on the — day of —, 18—, for the purpose (*state purpose as in request, but if vacancies in office are to be filled say: For the purpose of filling the vacancy in the office of — (give name of office and state how the vacancy occurred, whether by death, removal or otherwise, and who was the last incumbent, and in addition, where vacancy is in office of justice of the peace, state at what time the legal term of office will expire)*); a request for such meeting having been duly made to me in writing, by twelve qualified voters of said town, specifying as aforesaid the objects for which such meeting is to be held. (*If the meeting is for the purpose of filling vacancies, add: The poll of the election will be opened between the hours of nine and ten o'clock in the forenoon and closed at five o'clock in the afternoon.*)

Dated —, —, —, Town Clerk.

(a) A failure to give the notice required by statute is fatal to the validity of proceedings had at a special town meeting. *Hubbard v. The Town of Williamstown*, 61 Wis., 397.

NOTE.—Special town meetings have no authority to transact any business, except such as is specified in the notice, and they should be conducted as annual meetings are conducted, except where the statute otherwise provides.

COMPILER.

person at such meeting shall conduct himself in a disorderly manner, and after notice from the chairman, shall persist therein, the chairman may order him to withdraw from the meeting, and on his refusal, may order (1) any constable or other person to take him into custody until the meeting shall be adjourned. He shall have the same authority to preserve order, and enforce obedience, as is possessed by the board of inspectors at a general election.

SECTION 793. The town clerk shall be clerk of such town meetings and keep faithful minutes of the proceedings and a correct poll list (2), containing the names of all persons voting thereat; but if he be absent, then such person as shall be appointed by the inspectors shall act as clerk of such meetings. The minutes of the town meetings

Town clerk to
be clerk of
meetings.

58 Wis. 295.

(1) *Form of Order or Precept to take Disorderly Person into Custody.*

COUNTY OF —, }
Town of —, } ss.

The state of Wisconsin to any constable of the county of (or, to C. D.):

Whereas, at the town meeting of the town of —, now in progress, this — day of —, 18—, A. B. has conducted himself in a disorderly manner (*state in what regard*), and after notice thereof from the chairman has persisted therein, and having been ordered by said chairman to withdraw from said meeting, has refused so to do: You are therefore hereby ordered forthwith to take him, the said A. B., into custody until the said meeting shall be adjourned.

Given under my hand this — day of —, 18—.

— —, *Chairman Town Board of the Town of —.*

(2) *Form of Town Meeting Poll List.*

A true and correct poll list kept at a town meeting held in the town of —, in the county of —, on the — day of —, A. D. 18—, containing the names of all persons voting at said meeting:

No.	NAMES.	No.	NAMES.
—	—	—	—
.....
.....

Total number of ballots, —.

Signed, — —, *Town Clerk.*

shall be subscribed by the clerk and filed in the office of the town clerk within five days after such meeting.

Inspectors and
clerks to take
oath.

58 Wis. 295.

SECTION 794. Every person chosen at any town meeting to act as inspector, or appointed to act as clerk, shall, before entering upon the duties of his office, take and subscribe the oath required of inspectors and clerks of general elections (a).

Order of busi-
ness.

SECTION 795. At the opening of every town meeting, the chairman thereof shall state the business to be transacted, and the order in which such business will be entertained; and no proposition to vote a tax, except for the relief of the poor, and for defraying the necessary town charges, shall be acted upon out of the order of business as stated by the chairman; and no proposition to reconsider any vote shall be entertained at any town meeting, unless such proposition to reconsider shall be made within one hour from the time such vote shall have been passed, or the motion for such reconsideration shall be sustained by a number of votes, equal to a majority of all the names entered on the poll list at such election up to the time such motion shall be made. All questions upon motions at a town meeting shall be determined by a majority of the electors voting.

58 Wis. 295.

SECTION 796. (As amended by ch. 232, L. 1881.) The polls of the election shall be opened between the hours of nine and ten o'clock in the forenoon, and shall remain open until five o'clock in the afternoon, and the inspectors shall cause proclamation to be made at the opening of the polls, and at the closing thereof, and proclamation in like manner at least one hour before the closing of the polls, specifying the hour at which the polls of the election will be closed (1).

(a) See form of oath of inspectors at general election, under Sec. 28.

(1) *Form of Proclamation of Opening Polls.*

Hear ye! Hear ye! Hear ye! The polls of this election are now open.

Of Adjournment.

Hear ye! etc. The polls of this election are closed for one hour.

To be made One Hour before Final Closing.

Hear ye! etc. The polls of this election will finally close at five o'clock.

Of Closing

Hear ye! etc. The polls of this election are now closed.

SECTION 797. All town officers shall be chosen by ballot (a), except overseers of highways, and the electors of each road district shall be entitled to elect their own overseers of highways in such manner as the said electors shall direct, at any town meeting.

What officers
chosen by
ballot.

SECTION 798. Every person who shall have resided in the state one year immediately previous to any town meeting, and who shall be otherwise qualified to vote at a general election, may vote at such town meeting in the town where he resides.

Who may vote.

SECTION 799. In the election of town officers and justices of the peace, to be chosen by ballot at town meetings, each elector shall publicly at the poll deliver to one of the inspectors of such election a single ballot, on which shall be written or printed the names of all the persons voted for by such elector, with a pertinent designation of the respective office which each person so voted for may be intended to fill; and no ballot shall contain a greater number of names designated for any office than there are persons to be chosen at such election to fill such office; and such ballots shall be received, deposited in the ballot box and kept as is required at a general election.

Ballots, form
of: depositing,
etc.

SECTION 800. Whenever at any town meeting a justice of the peace is to be elected to fill a vacancy, and also a justice or justices are to be elected for the full term, it shall be necessary to distinguish on the ballot the person voted for to fill such vacancy.

Ballots for jus-
tices, what to
show.

SECTION 801. Every person offering to vote at a town meeting may be challenged as unqualified, by any elector or by one of the inspectors of such election, upon the same grounds and for the same reasons that a person offering to vote at any general election may be challenged; and when any person so offering to vote is so challenged, one of the inspectors shall tender to him the same oath or affirmation required to be tendered to a person challenged at a general election, and shall put to the person so challenged the same questions which the inspectors at a general election are authorized and required to put to a person who is challenged at such election; and all provisions of law relating

Challenges.

(a) See note to Sec. 42, and note a under Sec. 45.

to the reception or rejection of the vote of any person challenged and the duties of the officers in regard thereto at a general election, and all penalties prescribed for any violation of law, applicable to a general election, shall be applicable to town meetings to the same extent (a).

Canvass of
votes.

SECTION 802. At the close of every election, the votes given by ballot shall be publicly canvassed by the inspectors at the place where the meeting was held; which canvass, when commenced, shall be continued without adjournment or intermission until the same shall be completed.

Ballots to be
counted and
compared.

SECTION 803. Before the ballots are opened, they shall be counted and compared with the number of names of voters on the poll list; and if two or more ballots shall be found folded together and the inspectors shall be satisfied from their appearance, and from a comparison of the number of votes given, with the number of names on the poll list, that the ballots so folded together were given by the same person, they shall be rejected (b); and if the ballots shall be found to exceed in number the whole number of names on such poll list, they shall be placed in the box from which they were taken, and one of the inspectors shall publicly draw out and destroy unopened, as many ballots as shall be equal to such excess; the number of ballots and the number of names on the poll list agreeing, or being made to agree, the board shall then proceed to canvass and estimate the votes.

Clerk to
announce re-
sult of election.

SECTION 804. The canvass being completed and the result ascertained and determined by the inspectors, the clerk shall publicly read to the meeting the names of the persons for whom votes for each office were given, and the number of votes so given for each person, and the names of the persons declared to be duly elected by the inspectors to each office respectively; and such reading shall be deemed sufficient notice to every person elected to any office at such meeting of his election, whose name has been entered on the poll list as a voter.

Statement of
result to be
made, filed, etc.

SECTION 805. The inspectors shall also draw up a statement in writing, setting forth in words at

(a) See note a under Sec. 35.

(b) See note a to Sec. 42.

full length, the whole number of votes given for each office, the names of the persons for whom such votes were given, and the number of votes given for each person (1), and certify upon such statement their determination of the persons elected; which statement and certificate of determination shall be left with the town clerk, and recorded in his office and carefully preserved by him (2).

SECTION 806. The persons having received the greatest number of votes given for any office at such election shall be deemed and declared duly elected; and if two or more shall have received the greatest and equal number of votes for the same office, the inspectors of election shall determine the choice by lot, which lots shall be drawn by the persons receiving the equal number of votes; or in the absence of one or both of such persons, or

Who to be declared elected.

(1) *Form of Statement by Inspectors of Result of Election at Town Meeting.*

The following is a true and correct statement of the result of an election at a town meeting held at —, in the town of —, in the county of —, on the — day of —, A. D. 18—, setting forth the whole number of votes given for each office, the names of the persons for whom such votes were given, and the number of votes given for each person.

The whole number of votes given for chairman of supervisors was —, of which A. B. received —, and C. D. received —. The whole number of votes given for supervisors was —, of which E. F. received —, G. H. received —, I. J. received —, K. L. received —.

[Continue giving the number of votes for each office, and the number received by each person for such office, using words and not figures to express such numbers.]

— — }
— — } Inspectors.
— — }

(2) *Form of Certificate of Determination of Persons Elected.*

COUNTY OF —, } ss.
Town of —, }

We, the undersigned, inspectors of the election held at the time and place specified in the within statement by us subscribed, do hereby certify that the within named — is duly elected to the office of chairman of supervisors of said town, and that — and — are duly elected to the office of supervisors of said town. [Continue in accordance with the facts.]

In witness whereof we have hereunto set our hands this — day of —, 18—,

— — }
— — } Inspectors.
— — }

their refusal to draw by lot, the inspectors shall appoint a competent person to draw the same for them, and shall declare and certify the same accordingly.

Canvass on
proposition
other than elec-
tion of office.

SECTION 807. If any proposition other than the election of officers be voted upon by ballot at any town meeting, the ballots cast upon such proposition shall be deposited in a separate box, and a separate poll list kept of the electors voting upon such proposition (a). The ballots so cast shall be counted and canvassed, and the result ascertained declared and certified in like manner as in the case of ballots cast for officers.

OF TOWN OFFICERS.

(Chapter XXXIX, R. S. 1878.)

GENERAL PROVISIONS.

Town officers,
when elected.

SECTION 808. At the annual town meeting, there shall be elected in each town, the following officers, viz.: Three supervisors, one of whom shall be designated on the ballots as chairman, a town clerk, a treasurer, an assessor (or either two or three, if the town board at their last meeting before such election shall have so ordered); so many justices of the peace as are required by law to be elected at such meeting; so many constables, not exceeding three, as shall be ordered by the meeting; an overseer of highways for each road district in the town; and a librarian, if a town library has been established. No person, except an elector of the town, shall hold any town office; and no person shall hold the offices of treasurer and assessor at the same time.

How notified.

SECTION 809. Within five days after the election of any town officers, the town clerk shall transmit a notice (1) thereof to the person elected,

(a) Same form of poll list as Form 3 under Sec. 793.

(1) *Form of Notice by Town Clerk to Person Elected to Town Office.*

To _____:

You are hereby notified, that at the annual town meeting held in and for the town of _____, in the county of _____, on the _____ day of _____, you were duly elected to the office of

unless he voted at the meeting; and every person elected or appointed to any town office, except overseers of highways and justices of the peace, shall, within ten days after his election or appointment, or notification thereof, if required, and before entering upon the duties of his office, take and subscribe before the town clerk or some authorized officer, an oath (1) to support the constitution of the United States and the constitution of this state, and faithfully to discharge the duties of his office (naming the same) to the best of his ability, and shall file the same, duly certified by the officer administering it, in the office of the town clerk. Such oath shall be administered and certified without fee. The neglect to file such oath or an official bond when required, within the time prescribed therefor, shall be deemed a refusal to serve in such office.

To take and
file oath of of-
fice.

SECTION 810. Every bond required of a town officer shall be executed to the town by its name; shall be in such sum, when no other provision is made, as shall be fixed by the town board therefor, and if none be fixed, then in the sum of the bond of the last incumbent of the office; shall have at least two sufficient sureties, to be approved by the chairman in writing thereon (a), and be filed with

Official bonds,
how executed.

Sureties, etc.

— (if oath or bond is required, it would be well to add), if you neglect to file your oath (and bond) of office within ten days after receiving this notice, such neglect is by law deemed a refusal to serve in such office.

Dated this — day of —, 18—.

—, Town Clerk.

(1) *Form of oath of Town Officer.*

STATE OF WISCONSIN, {
County of —, } ss.

I A. B., having been elected (*designate office*) in and for the town of —, in said county, do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of the state of Wisconsin, and will faithfully discharge the duties of the office of —, to the best of my ability; so help me God.

I hereby certify that the foregoing oath was taken and subscribed before me by the said —, this — day of —, 18—.

—, Justice of the Peace.
(or any officer authorized to administer oaths.)

(a) The statute makes it the duty of the chairman of the town board to approve in writing indorsed thereon, the bonds of town officers; but the omission to formally approve such bonds, as required by law, does not relieve the principal or his sureties from their liability on the bond. [*Superior v. Omro v. Kaime*, 33 Wis. 468.]

the town clerk, within the time prescribed for filing his oath of office, except that the bond of the clerk shall be filed with the treasurer; and whenever the town board shall deem any bond insufficient, they may require an additional bond to be made and filed in a sum and within a time, not less than ten days, to be fixed by them.

Term of office.

§9 Wis. 468.

SECTION 811. Every town officer elected at an annual meeting, except justices of the peace, shall hold his office for one year and until his successor is elected and qualified. When elected at any meeting to fill a vacancy, he shall hold only for the residue of the term and until his successor is qualified.

Penalty for failure to give bonds or act.

SECTION 812. If any person elected to a town office, of whom an oath or bond is required, shall enter upon the duties of such office before he shall have filed such oath or bond, he shall forfeit not less than ten nor more than fifty dollars; and if any person so elected, except he be unable from disease or other infirmity to discharge the duties of such office, shall refuse or neglect to serve therein, he shall forfeit ten dollars, unless he shall have served in some town office for the term next preceding such election, and shall have given written notice of refusal to the town clerk within the time prescribed for filing his oath (1.)

When new town organized, justices to hold over.

SECTION 813. When a new town shall be organized, if there be one or more justices of the peace residing therein, they shall be deemed justices thereof, and shall hold their offices according to their respective terms; and only so many justices shall be chosen as shall be necessary to make up the number of four in such town.

Clerk to notify justices elect to draw lots for terms.

SECTION 814. The town clerk, within six days after the election of justices of the peace in any such new town, shall give notice in writing to the justices elected, to meet at such time and place as shall be specified in the notice, for the purpose of determining by lot the terms of office of such

(1) *Form of Refusal to Serve in Town Office.*

SIR:—You are hereby notified that I refuse to serve in the office of (*designate office*) to which I was elected at the annual town meeting held in said town on the _____ day of _____, 18—, I having served in the office of (*designate office*) for the term next preceding such election.

Dated this _____ day of —, 18—. _____
To _____, Town Clerk.

justices; which notice shall be given not less than six nor more than twelve days previous to the time appointed therein for such meeting (1).

SECTION 815. At the time and place so appointed, the town clerk shall cause to be written on separate pieces of paper, as nearly alike as practicable, the numbers, one, two, or so many of each such numbers, as shall correspond with the vacant terms of office to be supplied, and fold them up as nearly alike as practicable and deposit them in a box, and the persons so elected justices shall each severally draw one of said pieces of paper, if present; and if any shall have neglected to attend or shall refuse to draw, then some elector of the town selected by the clerk shall draw in his stead; and each such justice shall hold his office for such number of years as shall be designated by the number so drawn by or for him.

Drawing how
conducted.

SECTION 816. The town clerk shall make duplicate certificates of such drawing and the result thereof, one of which shall be filed and recorded in his office, and the other he shall transmit to the clerk of the circuit court of the county (2).

Clerk to cer-
tify result to
court.

(1) *Form of Notice by Town Clerk to Justices Elected, to Meet and Determine by Lot Terms of Office.*

To _____:

You and each of you, having been elected to the office of justice of the peace in and for the newly organized town of _____, county of _____, are hereby notified to meet at _____, on the _____ day of _____, 18—, at the hour of _____ o'clock, for the purpose of determining by lot your terms of office as such justices.

Dated at _____, this _____ day of _____, 18—.

_____, Town Clerk.

(2) *Form of Town Clerk's Certificate of Result of Drawing by Justices for Terms of Office.*

I, A. B., town clerk of the town of _____, county of _____, do hereby certify that on the _____ day of _____, 18—, at _____, in said town, a drawing of lots was had pursuant to notice, by and between _____ and _____, justices of the peace elect in and for said town, to determine their respective terms of office, and that at such drawing, _____ drew the term of one year, and _____ drew the term of two years.

Dated at _____, this _____ day of _____, 18—.

_____, Town Clerk.

Form of Clerk's Certificate of Result of Drawing of Lots to Determine Terms of Office of Justices, where one of the Justices Elect Neglects to Attend, or Refuses to Draw.

I, A. B. town clerk of the town of _____, do hereby certify that on the _____ day of _____, at _____, in the said town, a drawing

Resignations of
town officers.

SECTION 817. The town board may, for sufficient cause shown them accept the resignation in writing of any town officer, and thereon they shall indorse their acceptance and file the same with the town clerk (1).

Vacancies.

39 Wis. 408.
21 Wis. 280.

SECTION 818. If a vacancy occur in the town board (a), the remaining supervisors together with the town clerk shall fill the same (2). If the treasurer elect refuse to serve or the office of treasurer become vacant, or if he shall be unable for any cause to perform his official duties, the town board shall forthwith (b) appoint a treasurer for

of lots was duly had by and between C. D., a qualified elector of said town, by me selected to draw for D. E., a justice elect in and for said town, who, though duly notified, neglected to attend said drawing (or, refused to draw), and F. G., also a justice elect for said town, and that said C. D. drew for said D. E. the term of one year, and F. G. drew the term of two years.

Dated this — day of —, 18—.

— —, Town Clerk.

NOTE.— The certificate must be in duplicate

(1) *Form of Resignation of Town Officer.*

To—, Chairman of the town of —:

I hereby resign the office of —, for the following reasons (state same), and request the acceptance of my resignation.

Dated at —, this — day of —, 18—. (Signature.)

Form of Acceptance to be Indorsed thereon.

The within resignation by —, of the office of —, is hereby, for sufficient cause shown, accepted this — day of —, 18—.

— —, }
— —, } Town Board.
— —, }

(2) *Form of Appointment to fill Vacancy in Town Board.*

We, — — and — —, two supervisors of the town of —, and — —, town clerk thereof, do hereby appoint — — to fill the vacancy in the town board of said town, occasioned by the death (or, resignation, or, removal from said town) of — —, late a member of said board.

Given under our hands, this — day of —, 18—.

— —, }
— —, } Supervisors.
— —, } Town Clerk.

(a) Where there is more than one vacancy in the town board, the remaining supervisor and the clerk cannot fill such vacancy. [State ex rel. Carpenter v. Supervisors Town of Beloit, 21 Wis. 280.]

(b) The language "forthwith appoint," is to have a reasonable construction, and the provision does not require the board to act on the very day when the time for the treasurer elect to qualify, expires without his having done so; especially where he has up to that day manifested an intention to serve. [Supervisors Oniro v. Kaine 39 Wis. 408].

the remainder of such term (1); and such appointment shall not exonerate the former treasurer or his sureties from any liability incurred. If any other town office, except that of justice of the peace, be vacant, or incumbent thereof shall from any cause be unable to perform his official duties, the town board may appoint a suitable person to discharge the duties of such office until the same is filled by election, or the disability is removed (2). The appointee in either such case shall file an oath of office, and give the like bond required of the officer in whose place he is appointed and within the time hereinbefore prescribed (a).

(1) *Form of Appointment of Town Treasurer.*

COUNTY OF ———, }
Town of ———, } ss.

Whereas A. B., treasurer elect of said town of ———, refuses to serve, or, Whereas, the office of treasurer of said town of ———, has become vacant by the death (resignation, or otherwise) of A. B., late town treasurer thereof; or, Whereas, A. B., treasurer of said town of ———, is unable from sickness (or other cause) to perform his official duties, we, the undersigned town board thereof, do hereby appoint C. D. as treasurer of said town, for the remainder of the term of office of said A. B.

Given under our hands, this ——— day of ———, A. D., 18—.

————— }
————— } Town Board.
————— }

(2) *Form of Temporary Appointment by Town Board to fill Vacancy in Town office, other than Supervisor, Treasurer and Justice of the Peace.*

COUNTY OF ———, }
Town of ———, } ss.

Whereas, the office of ———, of the town of ———, has become vacant by the death (resignation, or other cause) of A. B., late incumbent thereof, we, the undersigned town board, do hereby appoint C. D., of said town, to discharge the duties of said office until the same is filled by election.

Given under our hands, this ——— day of ———, 18—.

————— }
————— } Town Board of, etc.
————— }

If the incumbent is unable to perform his official duties, say:

Whereas, A. B., of the town of ———, is unable from sickness (or otherwise) to perform his official duties, we the undersigned town board thereof, do hereby appoint C. D., of said town, to discharge the duties of such office until the disability of said A. B. is removed.

Given, etc.

(a) For oath of office and bond, see forms under sections 809, 835. The town clerk should forthwith give notice to persons so appointed.

May administer
oaths.

SECTION 818a. (Chapter 147, Laws 1883). The chairmen of town boards of supervisors are hereby empowered and authorized to administer oaths or affidavits in all matters coming before said boards.

TOWN BOARD.

Town board
how constitu-
ted; their du-
ties.

6 Wis. 350.
15 Wis. 311.
25 Wis. 551.
28 Wis. 674.
33 Wis. 493.
50 Wis. 331.
52 Wis. 407.
59 Wis. 15.

SECTION 819. The supervisors of each town shall constitute a board, to be designated the "town board of _____," and any two shall constitute a quorum, except when otherwise provided. They shall have charge of all the affairs of the town not by law committed to other officers; they shall draw orders on the treasurer for the disbursement of money to pay the town expenses, and for all other purposes, except for the support of schools; they shall have charge of all actions in which the town is a party; see that all penalties and forfeitures for the benefit of the town, all breaches of official bonds to the damage of the town, and all injuries to the property of the town are prosecuted for, and the damages and penalties and forfeitures collected and paid to the treasurer. If the town contains an unincorporated village, they may appoint, upon petition of ten resident freeholders, one or more firewardens for such village, who shall possess the powers and perform the duties prescribed by these statutes to firewardens in incorporated villages (a).

Relating to
power of towns
and town
boards.

SECTION 819a. (Ch. 292, Laws 1883.) All powers relating to villages and conferred upon village boards by the provisions of chapter 40, of the revised statutes, and all acts amendatory thereof, excepting those, the exercise of which, would conflict with the provisions of law relative to towns and town boards are hereby conferred upon towns and town boards of towns, containing

(a) See note b, under subdivision 2, Sec. 776.

When a contract entered into with the supervisors of a town for the performance of work provides that the work shall be paid for when completed and accepted by the supervisors, those officers may bind the town by waiving a departure from the precise terms of the contract, or accepting the work as it was in fact performed. [*Colby v. Town of Franklin*, 15 Wis. 311.]

Two supervisors may bind a town by their execution of a contract in its behalf, if such contract is one which a town has authority to make. [*Town of Beaver Dam v. Frings*, 17 Wis. 293.]

Duty of town supervisors, if plank and turnpike road corporations do not repair road when ordered. [Section 1891, R. S.]

Town supervisors may apply to change location of toll gates. [Id. Section 1850.]

When town supervisors must consent to sale of real estate of a ward residing in this state. [Id. Section 4000.]

one or more unincorporated villages, having each a population of not less than one thousand inhabitants, and are made applicable to such unincorporated village or villages, and may be exercised therein when directed by a resolution of the qualified electors of the town, at the last preceding annual town meeting (a).

Board of audit,
when to meet.

21 Wis. 280.
22 Wis. 496.

SECTION 820. The town board shall meet in each year on the Tuesday next preceding the annual town meeting, and also on the first Tuesday of December to audit and settle all charges against the town; and if the three supervisors be not present, the chairman, or in his absence, either of the other supervisors attending, shall call one or more justices of the town to act instead of the absent supervisor or supervisors, so as to make a board of audit composed of three. The town board may also meet at such other time or times as they shall deem necessary for the purpose of auditing and settling charges against the town; but no such special meeting shall be held unless notice (1) of the same shall be given to each supervisor at least two days prior to the time fixed therefor; and none but supervisors shall act on the board of audit at such special meetings (b).

(1) *Form of Notice of Special Meeting of Town Board as a Board of Audit.*

SIR:—The undersigned, two members of the town board of —, deeming a special meeting of said board necessary for the purpose of auditing and settling charges against said town, hereby notify you that such meeting will be held at (specify place) on the — day of —, 18—, at — o'clock in the —noon.

Dated this — day of —, 18—.

—, }
—, } Supervisors.

To E. F., Supervisor.

(a) For enumeration of powers of village boards see sec. 822, page 286, R. S. 1878.

(b) In the discharge of the special duty of auditing accounts, the board of audit must consist of three. The statute expressly requires that the board shall be composed of the three officers therein prescribed, for the safety of the town, and because an audited account creates or fixes a liability against the property of the citizens. [*Blackman v. The Town of Dunkirk*, 19 Wis. 188; 21 id. 579.]

The board authorized by section 820, consisting of a supervisor and two justices of the peace, or two supervisors and one justice of the peace, is merely an auditing board to adjust accounts payable by the town, and has no power to levy taxes. [*State ex rel. Carpenter v. The Supervisors of the Town of Beloit*, 21 Wis. 280.]

A member of the town board may recover of the town for materials furnished and work performed in repairing a bridge at the request and by the direction of the other two supervisors; such claim not originating in formal

Duties of
board of audit.

SECTION 821. It shall be the duty of such board to audit:

1. To examine and audit the accounts separately of each town officer, authorized by law to receive or disburse money, for all moneys received and disbursed.

2. (As amended by chapter 113, Laws 1882). To examine and audit every account presented against the town, and to endorse thereon the amount allowed and disallowed, stating the items; and no allowance shall be made on any account which does not specifically state each item, with the date, amount and nature thereof separately. Such statement shall be verified by the affidavit of the claimant, his agent or attorney, and filed with the town clerk; and no such claim against any town shall be acted upon or considered by any town board unless such statement shall have been so made and filed.

3. To examine into the character and circumstances of every other demand presented against the town, which they are not authorized to audit, and, in their report, give a summary thereof, with such recommendation as they think fit.

4. To draw up a report, stating in detail, the items of account audited and allowed, the nature of each, and the person to whom allowed; the same in respect to accounts disallowed, and also setting forth a statement of the fiscal affairs of the town, with an estimate of the sum necessary to be raised for the current expenses for the support of the poor, or for any other authorized purpose for the ensuing year, and adding such recommendations as they may see fit (1).

contract after public notice given and competition invited [Pickett v. School District, 25 Wis. 551, distinguished; Putnam v. The Town of Rubicon, 32 Wis. 498.]

Suit cannot be maintained against the town until the claim has been presented to the town board of audit. "The true intent and policy of the statute undoubtedly require that demands of the kind shall be presented to the auditing board for examination and allowance, before any action can be maintained upon them against the town." [Ibid.]

(1) *Form of Report under Section 821.*

The undersigned, town board of audit of the town of —, respectfully submit the following report, stating in detail the items of account examined and audited, and the items of account disallowed, during the year ending on the — day of —, 18—:

SECTION 822. Such report shall be produced and publicly read by the town clerk at the next ensuing town meeting; and the whole or any portion of such report may be referred by the order of such meeting to a committee, whose duty it shall be to examine the same and report thereon to such meeting.

Report to be read by clerk at next meeting.

SECTION 823. The amount of any account audited and allowed by the town board, shall be paid by the town treasurer on the order of the board, signed by the chairman, and countersigned by the clerk; and all orders issued to any person or persons by the town board, for any sum due from such town shall be receivable in payment of town taxes in said town. But no order shall be signed or issued for the disbursement of any money of such town until the tax for the payment of such order shall have been voted by the electors of such town, or until the town board shall have authorized the issue of such order (a); and no town board shall

Town orders: how allowed issued and paid.

Date of audit.	Names.	Items of account and nature of each.	Amount claimed.	Amount allowed.	Amount disallowed.
.....
.....
.....

(Add statement of the fiscal affairs of the town, showing moneys received and from what source, sums expended and for what purpose, resources, funds on hand and available, etc.)

The town board estimates that the following sums are necessary to meet expenses of the town for the ensuing year:

Current expenses \$
 Support of the poor* \$

* See Sec. 1516, R. S., for details of report concerning the poor.

Other incidental expenses \$

Summary of demands not audited but investigated :

JOHN SMITH. State particularly nature of his claim, alleged facts upon which based, facts as found by the board; if claim is on account of personal injury, or injury to property, by

(a) No order on the town treasurer should be made and issued without the direction of the town board, which should be entered in the record of their proceedings. [*Hubbard v. Town of Lyndon*, 28 Wis. 674.]

Such an order, issued without authority of the board, though payable to bearer, and signed by the chairman and countersigned by the clerk, is absolutely void into whosesoever hands it may fall. [*Id.*]

A town is not liable on an order drawn on its treasurer, until the order has been presented for payment and payment refused. [*Packard v. The Town of Bovina*, 24 Wis. 382.]

authorize the issue of any order in a sum exceeding the amount which the town is authorized to appropriate for the purpose for which such order is issued. Every supervisor, chairman or clerk violating the provisions of this section, shall forfeit not less than twenty-five nor more than one hundred dollars.

No action to be brought till claim laid before board of audit.

48 Wis. 138.
51 Wis. 467.
53 Wis. 527.
55 Wis. 116, 125.
56 Wis. 245, 670.
60 Wis. 288.

SECTION 824. (As amended by ch. 163, laws 1882.) No action upon any claim or cause of action, for which a money judgment only is demandable, except upon town orders, bonds, coupons or written promises to pay any sum of money, shall be maintained against any town, unless a statement or bill of such claim shall have been filed with the town clerk, to be laid before the town board of audit, nor until ten days after the next annual town meeting thereafter.

When actions may be brought.

SECTION 824a. (Ch. 240, Laws 1881). 1. No action shall hereafter be brought upon any county, city, town or school order, until the expiration of thirty days after a demand for the payment of the same shall have been made.

2. If an action is brought in violation of the preceding section, and the defendant fails to appear and defend the same, the court or the clerk thereof shall not permit judgment to be entered, and if judgment is entered, the same is absolutely void.

When judgment shall not be entered.

SECTION 824b (Ch. 19, Laws 1881, as amended by ch. 463, Laws 1885.) The town board of any town containing an unincorporated village of not less than three hundred inhabitants, within the limits to be designated by such town board, and recorded in the town clerk's office, may, when in its discretion the public good requires, appoint not exceeding three policemen, one night watchman and one superintendent of police, and prescribe their

reason of alleged defect in highway, state facts as to whether claimant was negligent, etc. Add recommendation touching any action to be taken.

GEORGE JONES. As in No. 1, according to the circumstances, and so on.

GENERAL RECOMMENDATIONS.

(Here add such recommendations as may be thought by the board of audit for the best interests of the town.)

We hereby certify the above report to be correct.

Dated this — day of —, 18—.

— — — } Town Board
— — — } of Audit.
— — — }

duties, and make by-laws for their government; and for the purpose of restraining drunkenness, disorderly conduct and the careless use of fire-arms, such town board shall have authority to pass such by-laws as it may deem expedient, and fix a penalty not exceeding ten dollars for any one violation of the same, and such by-laws shall be published and shall be binding, as are by-laws passed by qualified electors at an annual town meeting. And said policemen, night watchman and superintendent, shall have the same powers as are now conferred by law upon constables.

SECTION 825. Whenever a town meeting shall have lawfully ordered the erection of landmarks, the town board shall procure a sufficient number of monuments of stone or other durable material, each not less than three feet in length and six inches square, and either all dressed, with perpendicular sides and a square, flat top, having engraved thereon a cross, formed by lines, connecting the corners of said top, or having engraved on the top of such as shall be set at section corners the number of each section for which such monument forms a landmark, in figures, and those set for quarter posts, " $\frac{1}{4}$ S." as the board shall order; and shall also contract with the county surveyor, or any competent surveyor, for the survey of all the sections of said town and the erection of such monuments, one at each section corner, and one at each external quarter-section corner in said town; each to be set two and one-half feet in the ground, except when in highways, when the top shall be made even with or below the surface. Such surveyor shall, before the signing and delivery of such contract, give a bond (1) to the town in the sum of three thou-

Erection of
land-marks,
etc.

(1) *Form of Surveyor's Bond to Establish Landmarks.*

Know all men by these presents, that we, — — as principal, and — — and — — as sureties, of the town of — —, county of — —, are held and firmly bound unto the town of — — in the county of — —, in the penal sum of three thousand dollars for which sum, well and truly to be paid, we bind ourselves, our heirs, executors and administrators, and each of them, firmly by these presents.

Sealed with our seals and dated this — — day of — —, A. D. 18—.

The condition of the above obligation is such that whereas, the board of supervisors of the town of — —, on the — — day of — —, 18—, entered into a contract with the above

sand dollars, with sufficient sureties to be approved by the board, conditioned that he will make a correct and true survey of all the sections in said town, and cause landmarks to be set permanently at the section and quarter section corners, as established by United States survey, and faithfully perform such work and the duties imposed upon him according to law.

Minutes of surveys to be recorded, etc.

Corners how re-established.

SECTION 826. Such surveyor shall make in all cases a certificate, setting forth correct and full minutes of the survey, and giving exact bearings and distances of each monument from each other monument nearest it on any line in such town; and such statement shall be recorded in the office of the register of deeds. Such landmarks shall in all cases be set on section corners and quarter posts established by the United States survey; but if there be a clerical error or omission in the government field notes, or the bearing trees, mounds or other locating evidences specified therein be destroyed or lost, and there be no other reliable evidence by which said corners can be identified, said surveyor shall re-establish said corners under the rules adopted by the general government in the survey of the public lands. Such surveyor shall, in all cases, set forth such action in his certificate of the survey.

Board may locate section corners on highways, when.

SECTION 827. Whenever any section corners upon the public highways cannot be identified, the town board may, without previous vote

bounden ———, for the survey of all the sections of said town and for the erection of permanent landmarks; now, therefore, if the above bounden ——— shall make a correct and true survey of all the sections in said town and cause landmarks to be set permanently at the section and quarter section corners, as established by United States survey, and faithfully perform such work, and the duties imposed upon him according to law, then this obligation to be void, otherwise to remain in full force and effect.

Signed, sealed and delivered in the presence of:

———, [SEAL]
 ———, [SEAL]
 ———, [SEAL]

Form of Approval of Bond to be Indorsed Thereon.

We hereby approve the within bond, both as to the form thereof, and the sufficiency of the sureties.

Dated this ——— day of ———, 18—.

———, }
 ———, } *Town Board.*
 ———, }

of the town meeting, have such corners located by a competent surveyor, and cause landmarks similar to those above provided for to be erected at such corners so established.

SECTION 828. All landmarks set under authority of the provisions of the preceding sections shall be presumptively deemed to be at the section and quarter section corners, as originally established by the United States survey, at which they respectively purport to be set. Landmarks, evidence.

SECTION 829. In case any town shall vote in favor of the erection of permanent landmarks, the town board shall ascertain the amount of money requisite for such purpose (1), and deliver a statement of such amount to the town clerk, who shall add said amount to the other amounts to be raised for town purposes for the current year, and insert the same in the tax roll, and it shall be collected and paid into the treasury in like manner as other town taxes. Expense of landmarks, how paid.

SECTION 829a. (Ch. 347, Laws 1885, authorizing levy of special taxes for the purpose of re-establishing lost corners). Re-establishing extinct section corners.

1. The legal voters residing outside of any incorporated village, in any township in this state, in which there is an incorporated village, are hereby authorized to submit, at any annual town meeting, a proposition for the levy of a special tax upon the real estate outside of said incorporated village, for the purpose of providing for the re-establishing of extinct section and quarter section corners, and the erection of monuments thereon.

2. Before any such question shall be submitted to the voters, as provided in section 1, at least five legal voters, residing outside of any incorporated village in the town, shall sign a request, to the town clerk of said town, before the Five legal voters to sign a request.

(1) *Form of Statement of Amount Required for Erecting Landmarks.*

To — —, town clerk of — —:

The undersigned have ascertained the amount requisite for the erection of permanent landmarks in the town of — — to be the sum of — — dollars.

Dated at — —, this — — day of — —, 18—.

— —, }
 — —, } Town Board.
 — —, }

annual call by him, is made, for the annual town meeting, requesting him to insert in the notice for the annual town meeting, a notice that a vote will be taken upon such proposition, and upon the town clerk's receiving said request, he shall insert a notice (in his notice for the annual town meeting) that said proposition will be voted upon.

Duties of town supervisors when request is made.

3. Whenever the town clerk has given the notice, as aforesaid, that said proposition will be voted upon, it shall be the duty of the board of supervisors of said town, at the annual town meeting, to prepare a box for the reception of ballots upon such proposition. And the legal voters in said town, residing outside of said incorporated village, shall vote upon such proposition. Those in favor of the proposition, voting a ballot, "For the proposition". Those opposed, shall vote a ballot, "Opposed to the proposition." The polls of said election shall be open as long as the polls for the election of town officers are required by law to be kept open. If the legal voters of such town, residing outside of such incorporated village, shall vote in favor of such proposition, it shall be the duty of the supervisors of such town to procure a competent surveyor to do such work, and they shall be authorized to employ all necessary help, and furnish all necessary supplies to make said survey complete. And when completed, the supervisors shall certify the amount (by them expended in doing said work) to the town clerk of said town. And it shall be the duty of the town clerk of said town, upon the receipt of said certificate to levy the amount, so certified, upon the real estate of said town, outside of such incorporated village, in the same manner that other taxes are levied, said levy to be made at the same time other taxes are levied, next following the receipt of said certificate.

Town treasurer authorized to collect taxes.

4. The town treasurer of said town is hereby authorized to collect said tax in the same manner other town taxes are collected, and when collected, shall use said money in payment of any order or orders that may have been given by the town board of supervisors, in payment for said work.

TOWN CLERK.

SECTION 830. Every town clerk shall give a bond in substance as follows: A. B. chosen (or appointed) town clerk in the town of ———, and C. D. and E. F., his sureties, do hereby jointly and severally bind themselves to pay to said town, or to each and every person who may be entitled thereto, all damages which said town, or any person or persons may sustain by reason of the loss of any chattel mortgage or other paper required by law to be filed and kept in the office of said clerk, or by reason of neglect to perform, or unfaithful performance of official duty by said clerk or his deputy. The treasurer shall file the same, after its approval (1), in his office, and a copy thereof certified (2) by him shall be presumptive evidence of its execution by such clerk and his sureties.

Clerk to give
bond.

SECTION 831. Each town clerk may appoint a deputy (2), for whom he shall be responsible, who shall take and file the oath of office, and in case of the absence, sickness or other disability of the clerk, shall perform his duties and receive the

May appoint
deputy.

(1) *Form of Chairman's Approval of Town Clerk's Bond.*

I hereby approve the sureties named in the within bond.

Dated this ——— day of ———, 18—.

———, *Chairman of Town Board.*

(2) *Form of Certificate by Town Treasurer of Copy of Town Clerk's Bond.*

COUNTY OF ———, }
Town of ———. } ss.

I, A. B., town treasurer of the town of ———, in the county of ———, do hereby certify that I have carefully compared the above and foregoing with the original and official bond of ———, town clerk of town, on file in my office, and that the same is a true copy thereof, and of the whole thereof.

Dated this ——— day of ———, 18—.

———, *Town Treasurer.*

(2) *Form of Appointment by Town Clerk of Deputy Town Clerk.*

I, ———, town clerk of the town of ———, county of ———, do hereby appoint ——— deputy town clerk of said town.

Dated this ——— day of ———, 18—.

———, *Town Clerk.*

same compensation, unless the town board shall appoint a person to act as clerk.

SECTION 832. As amended by Ch. 143, L. 1882, it shall be the duty of the clerk (a):

Duties of clerk.

1. To act as clerk of all town meetings, perform all the duties of clerk of election, and keep faithful minutes of all the proceedings, and record such minutes, and enter at length every order, resolution or direction, and all rules and regulations made by the meeting, in the book of town records; and if in his absence another person shall have acted in his stead, to record the minutes taken by him of the proceedings.

2. To transmit to the county clerk, within ten days after any town meeting, a certified statement (1) of all town officers elected at the same, showing the post office address of chairman, treasurer, assessor, and town clerk, and promptly to notify him of any subsequent changes in either of said last named offices, and to notify the persons elected, when required by section eight hundred and nine.

3. To forthwith notify the county treasurer of the appointment, by the town board, of any town treasurer (2).

(a) Town clerk shall keep cancellation books. See chapter 209, laws 1879, following section 861 of this work.

(1) *Form of Statement of Town Officers Elected to be Transmitted by Town Clerk to County Clerk.*

To ———, County Clerk:

The following is a statement of all town officers elected in the town of ———, county of ———, at the annual town meeting of said town, on the ——— day of ———, 18—.

Supervisors { ———, Chairman. Post office address.
 { ———,
 { ———,

Town Clerk ———,

(Give a list of all the officers elected, and give the post office address of chairman, town treasurer, assessor and town clerk.)

I hereby certify that the foregoing statement is true.

Dated ———, this ——— day of ———, 18—.

————, Town Clerk.

(2) *Form of Notice to County Treasurer of Appointment of Town Treasurer by Town Board.*

To ———, County Treasurer:

SIR:—You are hereby notified that on the ——— day of ———, 18—, A. B. was appointed by the town board treasurer of the town of ———.

Dated this ——— day of ———, 18—.

————, Town Clerk.

4. To transmit to the clerk of the circuit court, immediately after the election or appointment of any justice of the peace in his town, a written notice, stating the name of each such justice, and the term for which he was elected or appointed, and when to fill vacancy, who was the last incumbent of the office (1); and likewise the name of every constable after he shall have qualified (2); and, upon the resignation of a justice, to immediately transmit notice thereof (3).

5. To record every request for any special vote or any special meeting; and to properly post the requisite notices thereof, as required by law.

6. To post up, in at least three of the most public places in the town, fair copies of all by-laws

(1) *Form of Notice by Town Clerk to Clerk of Circuit Court of Election of Justices of the Peace.*

To the clerk of the circuit court of ——— county:

You are hereby notified that at a town meeting held in the town of ———, in said county, on the ——— day of ———, 18—, the following named persons were elected to the office of justice of the peace of said town, and for the terms set opposite their respective names, to wit:

———, ——— years,
 ———, ——— years,
 ———, ——— years,

the last named to fill vacancy in place of ———, last incumbent, who has resigned (or otherwise).

Dated ———, this ——— day of ———, 18—.

———, Town Clerk.

NOTE.—Notice of appointment of justices may be given, adapting the above form accordingly.

(2) *Form of Notice by Town Clerk to Clerk of Circuit Court of Election or Appointment of Constable.*

To ———, clerk of the circuit court of ——— county:

You are hereby notified that on the ——— day of ———, 18—, A. B. was chosen (or appointed) a constable in and for said town of ———, in the county of ———, and that said A. B. has qualified as such constable.

Dated ———, this ——— day of ———, 18—.

———, Town Clerk.

(3) *Form of Notice by Town Clerk to Clerk of Circuit Court of Resignation of Justice of the Peace.*

To ———, clerk of the circuit court of ——— county:

You are hereby notified that on the ——— day of ———, A. D. 18—, A. B. resigned his office of justice of the peace in and for said town of ———, in said county, and that his resignation has been accepted.

———, Town Clerk of ———.

Dated this ——— day of ———, 18—.

made by the town, and enter over his hand, in the town records, in connection with such by-laws, the time when and the places where the same were posted.

58 Wis. 54.

7. To act as clerk of the town board; to keep and record faithful minutes of their proceedings, and to enter at length every vote, order, direction, resolution or regulation made by the board, or by the supervisors in their official capacity, and to file all accounts audited by the board or allowed at town meeting, and enter a statement thereof in the book of records (a).

8. To furnish to the town board of audit, at the annual meeting, every statement received from the county treasurer of money paid to the town treasurer, and all other information respecting the fiscal affairs of the town in his possession, and all accounts, claims and demands against the town filed with him.

50 Wis. 155.

9. To have the custody, and to safely keep all accounts, oaths of office, bonds, chattel mortgages, records, files, papers and property received from his predecessor or other persons, and required by law to be deposited in his office, and all books, records and papers of the town, not otherwise provided for by law, and to deliver all the same to his successor; to permit any person with proper care to examine and copy any of the same, and to make and certify a copy of any thereof, when required, on payment of his fees therefor (1).

10. To file, when presented, all chattel mortgages and affidavits relating thereto, and to enter at the time of filing, in a book properly ruled and kept therefor, the names of all the parties, ar-

(a) It is the duty of the Town Clerk to keep a record of all licenses granted by the Town Board for the sale of intoxicating liquors. *Hepler v. State*, 58 Wis., 54.

(1) *Form of Town Clerk's Certificate of Copy of Papers Filed or Deposited in his Office.*

COUNTY OF _____, }
 Town of _____, } ss.

I, A. B., town clerk of the town of _____, in the county of _____, do hereby certify that I have compared the above and foregoing with the original filed (or deposited) in my office, and that the same is a true copy thereof, and of the whole thereof.

Dated this _____ day of _____, 18—.

_____, Town Clerk.

ranging mortgagors alphabetically, the date of each mortgage and the date of filing the same, and of each affidavit relating thereto (2).

11. To demand and obtain the official books and papers of any justice of the peace, when his office shall become vacant and his successor be not elected or appointed and qualified, or when any justice of the peace shall die; and dispose of the same as required by law.

12. To perform the duties required in title two, respecting elections; in chapter seventeen, respecting the drainage fund; in title six, respecting public instruction; and title fourteen, respecting highways, ferries and drains; and such other duties as may be required by law.

13. (Ch. 143, Laws 1882.) It shall be the duty of the town clerks to post correct duplicates of the report of the town board, as provided in subsection 8, of said section 832, on the morning of election day of each year, in three public places, as convenient as possible for the examination of said report by all the voters in said precinct.

SECTION 833. When a new town is organized, embracing any part of an old town, the clerk of the new town shall receive all the papers and files removable, and copy all records, papers and files not so removable, in the office of the clerk of such old town, which belong or pertain to such new town or any of the inhabitants thereof or lands therein; and the clerk of such old town shall deliver such papers and files, and shall certify such copies; and the same, being deposited in the office of the clerk of the new town, shall have the same effect as if originals and originally filed there.

When new town organized, clerk to receive files, etc.

SECTION 834. Every town clerk shall be entitled to receive from any person requiring his service the following fees therefor, viz.:

Fees of town clerk.

(2) *Form of Town Clerk's Certificate to Transcript from Town Book of Records.*

COUNTY OF _____, } ss.
 Town of _____, }

I, A. B., town clerk of the town of _____, in the county of _____, do hereby certify that I have compared the above and foregoing with the town book of records in my custody as said town clerk, and that the same is a correct transcript therefrom.

Dated this _____ day of _____, 18—.

_____, Town Clerk.

For filing and entering a chattel mortgage or affidavit, twelve cents.

For recording any mark or brand, twelve cents.

For giving a certificate thereof, the same.

For making copies of any records or papers, when required, seven cents for each folio and twelve cents for a certificate (a).

May procure
safes.

SECTION 834 a (Ch. 114, Laws 1883). Town boards of any town, in which the town clerk has on file in his office, not less than one thousand dollars (\$1,000) in chattel mortgages during the year, shall be authorized to procure a fire-proof safe for the use of such town clerk and pay the necessary expenditure therefor out of the general fund of the town.

Records to be
kept therein.

2. The town clerk of any town for which such safe is procured, shall be required to keep all bonds, records, chattel mortgages, and all books, papers and documents in his custody as such clerk which the capacity of the safe will permit, securely locked up in such safe at all times when they are not in actual use, and if he shall fail to so do, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, be fined not more than one hundred dollars (\$100.)

TOWN TREASURER.

Bond of treasurer.

25 Wis. 498.
30 Wis. 348, 468.
40 Wis. 469.

SECTION 835. Every town treasurer shall give a bond in a sum to be fixed at not less than the whole amount of money estimated to come into his hands during his term, conditioned that he will faithfully discharge the duties of his office, and that he will faithfully and truly account for, and pay over according to law, all moneys which shall come into his hands as such treasurer, including all moneys received from the state or county on account of the drainage fund, the school fund income, or any other account whatever (1).

(a) See Sec. 2954, R. S., as to publication of table of fees.

(1) *Form of Bond to be given by Town Treasurer.*

Know all men by these presents, that we, A. B., of the town of —, in the county of —, in the state of Wisconsin, as principal, and C. D. and E. F., of said county and state, as sureties, are held and firmly bound unto the town of —, in said county, in the sum of (not less than the whole amount of

SECTION 836. It shall be the duty of the town treasurer: His duties.

1. To receive and take charge (a) of all moneys belonging to the town, or which are required by law to be paid into the treasury, and to pay the money of the town, only upon the lawful order of such town, or of its officers duly made pursuant to law (b). 24 Wis. 312.
25 Wis. 503.
39 Wis. 323, 468.
40 Wis. 469.
42 Wis. 332.

2. To preserve all books, papers and property appertaining to or filed in his office.

3. To keep a true, itemized account of all moneys whatsoever received by him upon any account by virtue of his office, and of the dis-

money estimated to come into his hands during his term) — dollars, to be paid to the said town; for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this — day of —, 18—.

WHEREAS, the above bounden A. B. was elected (or appointed) to the office of treasurer of the town of —, on the — day of —, 18—: Now the condition of this obligation is such, that if the said A. B. shall faithfully discharge the duties of his said office of treasurer, and faithfully and truly account for and pay over, according to law, all moneys which shall come into his hands as such treasurer, including all moneys received from the state or county on account of the drainage fund, the school fund income, or any other account whatever, then this obligation shall be void; otherwise to remain in full force and effect.

Signed, sealed and delivered in presence of:

— — —, [SEAL]
— — —, [SEAL]
— — —, [SEAL]

Form of Chairman's Approval of above Bond to be Indorsed thereon.

I hereby approve the within bond, both as to the form thereof and the sufficiency of the sureties.

Dated this — day of —, 18—.

— — — Chairman of Town Board.

(a) Where a town treasurer deposits the town money in a bank, without authority of law, and it is lost by a failure of the bank, he and his sureties cannot defend on the ground that he was not guilty of want of care or diligence in making such deposit. [*Sup'rs of Omro v. Kaime et al.* 39 Wis. 468.]

(b) See note a, under section 823.

Where a town treasurer collects a tax by virtue of his office, without a warrant as required by the statute, he cannot retain the money as his own upon the ground that his authority was imperfect. He may decline to collect the tax without a warrant, but, having collected it, he cannot be heard to claim that he collected it for himself. [*Cairns et al. v. O'Brien et al.* 40 Wis. 469.]

Embezzlement by public officers, and penalty therefor. [R. S. Sec. 4418.]

As to what is embezzlement, etc. [*Id.* Secs. 4418, 4419.]

Penalty for neglect or refusal to prosecute person guilty of embezzlement. [*Id.* Sec. 4420.]

When two per centum upon amount of all premiums for insurance to be paid to town treasurer for fire department of village. [Sec. 1936, R. S.]

bursement thereof, and to exhibit such account and deliver all his vouchers to the town board of audit at its annual meeting (1).

4. To collect and pay over taxes, making return of delinquents, and perform all other duties appertaining thereto required of him by title thirteen.

5. To perform all the duties required of him in title six, relating to common schools, and all the duties required of him in chapter seventeen, relating to the drainage fund.

6. To deliver, on demand, to his successor in office, after he shall have qualified, all the books and property belonging to or deposited in his office, and all moneys in his hands as such treasurer, with a statement of the amount thereof belonging to such several funds (2).

7. To make the statements required in section

(1) *Form of Treasurer's Book of Account.*

A. B., Treasurer, in account with Town of _____:		DR.	
18—(day of month.)	To amount received for taxes.....	.....	.....
	To amount penalty collected, etc.....	.....	.....
CONTRA.		CR.	
18—(day of month.)	By amount paid, etc.	No. of voucher.	.....
	By amount paid, etc.	.....	.....

(2) *Form of Statement Required by Subdivision 6.*

Statement of moneys in my hands as town treasurer of the town of _____, with the amount thereof belonging to each of the several funds, this _____ day of _____, 18—.

TO WHAT FUND BELONGING.	AMOUNT.
.....
.....
.....

I hereby certify the foregoing statement to be correct.

A. B., *Town Treasurer of the Town of _____.*

Dated this _____ day of _____, 18—.

eight hundred and thirty eight, and perform all other duties required by law (a).

SECTION 837. If, upon the return of the uncollected taxes to the county treasurer in any year, there shall be a deficiency of cash funds in the town treasury, to pay all the charges thereon, during such year, then the town treasurer shall set apart in the order specified below, a sufficient amount of such funds to pay in full each of such charges, so far as such funds will extend; and he shall pay the same only in the order, and for the objects herein specified, to wit:

Order of payments, when deficiency of funds.

24 Wis. 812.
25 Wis. 503.

1. The amount of moneys raised for common school purposes and returned taxes collected for any school-district.

2. The amount raised for the support of the poor.

3. All moneys raised for highways and bridges, and returned taxes collected for any road district.

4. The amount of moneys raised for all other town purposes shall be applied to the payment of all other lawful claims upon the town treasury, in the order in which such claims may be presented, when there are funds in the treasury.

SECTION 838. Every town treasurer shall, on the Saturday next preceding the annual session of county board, make out in duplicate a written statement of the whole amount of moneys received by him as treasurer, during the year preceding that day, which he has paid or ought by law to pay to the county treasurer, showing particularly the several amounts thereof, the dates and persons or officers, respectively, when and from whom received, and for what the same was so paid to him; also showing the amounts which he has paid the county treasurer, and the dates thereof (1). He shall also at the expiration of his term of office, or whenever he shall vacate the same make the like statement of such moneys received

To make statement to county board.

(a) For duty of town treasurer as to orders, court certificates, bonds and coupons, received by him in payment of tax, or for any other purpose, see chapter 209, Laws of 1879, following section 851, of this work.

(1) *Form of Statement of Town Treasurer of Account with County Treasurer.*

Statement of amount of money received by — —, as treasurer of the town of —, in the county of —, which he has paid or ought by law to pay over to the treasurer of said

and payments made, of which he has not previously filed such a statement. He shall verify by affidavit or officially certify all such statements to be true and correct and to contain the full amount of moneys so by him received during the period of time included therein, and immediately file the same with the town clerk. One of each such statements shall be annually taken by the chairman or supervisor who shall attend the county board, and filed at the annual session thereof with the county clerk.

Penalty for not making statement.

SECTION 839. Every town treasurer who shall refuse or neglect to make and file any such statement, as required in the preceding section, shall forfeit not less than twenty nor more than two hundred dollars, one half for the benefit of the prosecutor.

Town treasurer to receive percentage on taxes collected.

SECTION 840. (As amended by section 4, chapter 269, Laws 1881). Every town treasurer shall receive two per centum on all taxes collected by him prior to the tenth day of January, and five per centum on all collected thereafter during his term, to be retained from the collections; provided, the annual town meeting may by ballot or

county, for and during the year (or other period, specifying it) preceding the date hereof:

When received	From whom received.	For what paid.	Amt.	Date of payment to county treasurer.	Amt.
.....
.....
.....

Amount received as town treasurer to be paid to county treasurer... \$
Amount paid over to county treasurer

Dated this ____ day of ____, 18—.

____, Town Treasurer.

COUNTY OF ____, }
Town of ____, } ss.

I, _____, town treasurer of the town of _____, do hereby certify that the foregoing statement by me made is in all respects true and correct, and that the same contains the full amount of moneys so received by me during the period of time included therein, being from the ____ day of ____, 18—, to the ____ day of ____, 18—, inclusive.

In witness whereof, I have hereunto set my hand this ____ day of ____, 18—.

____, Town Treasurer.

NOTE.—The foregoing statement must be made and executed in duplicate.

resolution, reduce such fees on taxes paid before the tenth day of January, to not less than one per centum; and in addition thereto, when collection is made by distress and sale of goods, the same fees given by law to constables for levy and sale of goods upon execution, and also two per centum of all drainage fund moneys that shall be received by him from the state or county, to be retained out of such moneys; and for making his return of delinquent taxes, one dollar and six cents for each mile traveled one way to deliver the same, to be paid by the county treasurer on settlement; he shall have no other compensation. The treasurer of each incorporated village authorized to perform similar duties shall receive the same compensation therefor, and the electors may in like manner limit the same at the charter election, except when otherwise provided in the act of incorporation.

Village treasurer to receive same.

CONSTABLES.

SECTION 841. Every constable shall give a bond in substance as follows: Bond of constable.

A. B., chosen (or appointed) constable in the town of ———, and C. D. and E. F. as his sureties, do hereby jointly and severally bind themselves and agree to pay to the said town, and to each and every person who may be entitled thereto, all such sums of money as the said constable may become liable to pay to the said town, and each and every person, for or on account of any moneys which may come into his hands by virtue of his office, or for the neglect of any official duty.

43 Wis. 841.

A. B.,
C. D.,
E. F.

Dated the ——— day of ———, and executed in the presence of ———, and sureties approved by L. M., *Chairman*.

A copy thereof certified by the town clerk shall be presumptive evidence of its execution by such constable and his sureties.

SECTION 842. The constable shall be a ministerial officer of justices of the peace, and it shall be his duty: His duties.

1. To serve within his county any writ, process, order or notice, and execute any order, war-

rant or execution lawfully directed to or required to be executed by him by any court or officer.

2. To attend upon sessions of the circuit court in his county when required by the sheriff.

3. To inform the district attorney of all trespasses on public lands of which he shall have knowledge or information.

4. To perform the duties required in chapter sixty-six, prohibiting the sale of liquors to Indians.

5. To cause to be prosecuted all violations of law of which he has knowledge or information.

6. To perform all other duties required by any law.

Fees of constables.

SECTION 843. Constables may receive the following fees:

For serving a warrant or other writ, not otherwise provided for, on each person named therein, twenty-five cents.

For a copy of every summons delivered on request or left at the place of residence of the defendant, twelve and a half cents.

For serving a subpoena or summons on each person named therein, twelve and a half cents.

For serving an attachment, fifty cents.

For each copy of an attachment, twelve and a half cents.

For each copy of inventory of property seized on attachment, twelve and a half cents.

For issuing summons on garnishee, twenty-five cents.

For copy of any affidavit or other paper not otherwise enumerated, per folio, ten cents.

For posting up each notice, twelve cents.

For each mile actually traveled, going and returning to serve any process, or to give or to post up notices, ten cents; but he shall serve all process and papers in any one action, which may then be in his hands for service, which can be served at the same time and upon all persons upon whom service is required, who can be served in the same journey; and he shall be entitled to one mileage for the greatest distance actually traveled to make such service, and no more.

For committing to prison, thirty-seven cents.

For summoning a jury, fifty cents.

For writing a list of jurors, twelve cents.

For attending on a jury, twenty-five cents.

For attending at the command of a justice of the peace on the trial of a cause before him, fifty cents for each half day.

On all sums made on execution and paid over, charged upon the defendant, five per cent.

For notifying a plaintiff of a service of a warrant or summons or attachment, returnable in three days, twelve cents.

For serving every writ in an action for the recovery of personal property, fifty cents.

For summoning and swearing appraisers and taking appraisement, fifty cents.

For taking and approving sureties in any case, twenty-five cents.

He shall also receive all his necessary disbursements, actually made for board and conveyance of prisoners, to be settled by the county board; and when any person accused of any felony shall escape his pursuit, without fault or negligence of the constable, and the district attorney shall certify that such pursuit was necessary and proper, the county board may, in their discretion, allow a fair compensation for the time and necessary expense incurred in such pursuit (a).

SECTION 844 (As amended by ch. 145, Laws 1881.) Persons acting as, entitled to fee.
When the services in the last section mentioned are performed by any other person, except a party to the action, the same fees shall be allowed as constables are entitled to receive, and no more. No constable shall serve or execute any summons, writ or process in any action or proceeding, wherein he is agent, or attorney for the plaintiff, or interested in the collection of the claim sought to be recovered, and no constable shall recover any costs, fees or expenses, nor shall any costs or fees be taxed for any services rendered in violation of the provisions of this section.

JUSTICES OF THE PEACE.

SECTION 845. There shall be four justices of the peace in each town, of whom two shall be elected at each annual town meeting. Their term of office shall be two years from the first Monday of May next following such town meeting. Every Number of justices. Their terms.

(a) Action in justice's court commenced by or against any town, or town officer in his official capacity, to be commenced before a justice of the peace elected in some other town in the county. [Sec. 3598, R. S.]

Vacancies how
filled.

vacancy shall be filled at the annual town meeting next ensuing, unless a special election shall have been held; and when so elected, such justices shall hold only for the residue of the unexpired term. When a vacancy shall occur, or when any such justice shall, from any cause, become permanently unable to perform his official duties, the town board may appoint temporarily a suitable person to such office, to hold until it shall be filled by election (1).

Oath of office.

SECTION 846 (As amended by ch. 45, Laws 1881, and ch. 284, Laws 1882). Every justice of the peace elected for a full term shall, on or before the first Monday of May next succeeding his election, and every justice elected or appointed to fill a vacancy shall, within ten days thereafter, or after notice thereof if required to be given, take and subscribe the oath of office prescribed in section 809, before a competent officer, and file the same with the clerk of the circuit court; and shall also, within the same time, execute and file with said clerk a bond, with two or more sufficient sureties, to be approved by the chairman or any two of the supervisors, substantially in the following form, viz.:

A. B. chosen a justice of the peace in the town of ———, and C. D. and E. F., as his sureties, do hereby jointly and severally bind themselves and agree to pay on demand to the said town, and to each and every person who may be entitled thereto, all such sums of money as the said justice may become liable to pay on account of money

(1) *Form of Temporary Appointment of Justice of the Peace of fill Vacancy.*

Whereas, the office of justice of the peace of the town of ——— has become vacant by the death (*resignation, as the case may be*) of A. B., late incumbent thereof; or, whereas, A. B., a justice of the peace of the town of ———, has become permanently unable to perform his official duties by reason of (*state disability*); we, the undersigned, town board, do hereby temporarily appoint ——— to such office, to hold until it shall be filled by election.

Given under our hands this ——— day of ———, 18—.

———, } *Town*
———, } *Board.*

which may come into his hands by virtue of his office.

Dated this ——— day of ———, 18—.

A. B.

C. D.

E. F.

Executed in the presence of, and sureties approved by

L. M., Chairman.

or

A. }

B. }

Supervisors.

A copy thereof certified by the clerk of the circuit court shall be presumptive evidence of its execution by such justice and his sureties.

2. In any and all cases where a justice of the peace shall have qualified as such officer in the manner as was provided in said section 846, of the revised statutes, before said section was amended by said section 1, of chapter 45, of the laws of 1881, such qualification shall be deemed taken and held a legal and sufficient qualification for and during the full term of office for which any such justice shall have been elected or appointed.

Qualification to be deemed legal.

3. All acts and parts of acts conflicting with any of the provisions of this act are hereby repealed.

SECTION 847. In all cases when any person shall be duly elected justice of the peace, but shall fail to qualify within the time prescribed by law, on account of necessary absence from the county, or of being sick, he may qualify as such justice at any time within six months from the time of his election, if the vacancy occasioned by his failure to qualify shall not have been filled as by law provided, by taking and filing with his oath of office and bond, a further oath that he did not qualify within the time prescribed by law for the reason only that he was sick, or absent from the county (1); and he may thereupon enter

When may qualify.

(1) *Oath of Person Elected Justice of Peace, Failing to Qualify within the Time Prescribed by Law.*

COUNTY OF ———, } ss.
Town of ———.

A. B., being first duly sworn, on oath, says that he was duly elected justice of the peace in for said town of ———, on the

upon and exercise the duties and function of such office during the residue of the term for which he was so elected.

TOWN LIBRARIAN.

Bond of librarian.

SECTION 848. Whenever a town librarian is elected, he shall give a bond, conditioned that he shall faithfully discharge all the duties of his office (2).

His duties.

SECTION 849. The town librarian shall have the care and custody of the town library, and of all the books, papers and property appertaining thereto. He shall, if the town fail to do so, make by-laws, rules and regulations, under the advice of the town board, for the management and use thereof, and such by-laws, rules and regulations, may provide suitable penalties for a breach thereof, and shall have the same force as if enacted by the town. He shall, under the direction of the town board, make all purchases of books, and all other expenditures in behalf of the library, and shall keep an account of all his transactions, and of all moneys received and expended by him. He shall deliver to his successor in office all books, papers, moneys or property in his hands as such librarian.

COMPENSATION OF OFFICERS.

Compensation of town officers.
56 Wis. 666.

SECTION 850. Supervisors, clerks of the polls and town clerks, shall be entitled to a compensa-

_____ day of _____, 18—; that he did not qualify within the time prescribed by law, for the reason only that he was sick (or, absent from the county of _____ aforesaid).

Subscribed and sworn to before me, this _____ day of _____, 18—. A. B.

(2) Form of Bond of Town Librarian.

As in form under section 835 to and including the word "discharge," then continue: all the duties of his said office, then this obligation shall be void; otherwise of full force and effect.

Signed and delivered in the presence of:

_____, [SEAL.]
_____, [SEAL.]
_____, [SEAL.]

The same form of approval as that under section 835.

NOTE. —When no other provision is made, the bond of a town officer must be in such sum as shall be fixed by the town board, and if none be so fixed, then in the sum of the bond of the last incumbent of the office. See Sec. 810.

tion for each day actually and necessarily devoted by them to the service of the town, and in the discharge of any of the duties of their respective offices, required of them by law, two dollars for each day, and at the same rates for parts of a day unless the town shall have fixed a different compensation at the annual town meeting; and no town officer shall be entitled to pay for acting in more than one official capacity or office, at the same time.

SECTION 851. The town assessor shall be paid such compensation, not exceeding three dollars per day, as may be allowed them by the town board.

Of town assessor.
56 Wis. 606.

* * * * *

TOWN CLERKS, ETC., TO KEEP CANCELLATION BOOKS.

(Chapter 200, acts of a General Nature laws of 1879.)

SECTION 1. The clerk of every town, village, city and county of this state, shall obtain and keep for the use of such town, village, city or county, a book, to be denominated a "cancellation book," in which he shall enter the number and date of each order drawn upon the treasury of such town, village, city or county, page of journal authorizing the same, the amount thereof, the name of the person in whose favor it was drawn, the name of the person to whom it was paid, the purpose for which it was allowed, and when canceled by the proper authorities.

Number and date of orders drawn on the treasurer to be recorded.

SECTION 2. There shall also be filed by the county clerk of each county, immediately after the adjournment of any term of court held in such county, by the clerk of such court, a list of the court certificates drawn on the treasury of such county, specifying the number, date, amount, name of person and character of service performed, which said statement shall be recorded in a department which shall be set apart for that purpose in the cancellation book, with a blank column showing when such certificate was cancelled.

Court certificates.

SECTION 3. Whenever the treasurer of any town, village, city or county shall pay, or receive

Duty of town treasurer.

in payment of tax, or for any other purpose (which receipt shall be equivalent to the payment thereof), any bond or coupon, order or court certificate, such treasurer shall return such order, certificate, bond or coupon to the proper authorities at their first meeting, and such orders, certificates, bonds and coupons, shall be canceled by destroying them, and the date of their cancellation shall be immediately entered by the clerk in the cancellation book.

Bonds and coupons.

SECTION 4. There shall also be kept in such cancellation book, in a department to be provided for that purpose, a record of all bonds and coupons issued by the authorities of such town, village, city or county, in pursuance of any provision of law which shall specify the number thereof, the note (a) of interest, when issued, for what purpose issued, when payable, and when paid, exchanged or canceled.

Towns, cities, and villages, which are excepted.

SECTION 5. Any town, village or county, which has provided itself with the same or similar records, covering or intended to cover the object designed by the cancellation book, shall not be required to supply itself with a new cancellation book under the provisions of this act.

County to furnish towns with blank cancellation books.

SECTION 6. The county clerk of each county not excepted by section five of this act, shall immediately upon the passage of this act, ascertain the number of books that will be necessary to supply his county, and the towns, cities and villages therein, under the provisions of this act, and shall prescribe the forms and size thereof, and shall procure the same at the expense of the county; and upon receipt of such books the said county clerk shall transmit the same to the town, city and village clerks entitled thereto. The cost of said books shall be charged to the towns, cities and villages respectively, for which the same were ordered.

Duties of town, city and village clerks.

SECTION 7. When such cancellation book shall have been received by any town, village, city or county clerk, such clerk shall enter in such cancellation book a list of all orders, court certificates and bonds which remain outstanding and unpaid. And thereafter he shall immediately enter in such

(a) This word occurs in the act as published. It is erroneously used for the word "rate."

book a record of every order, court certificate, bond or coupon upon the making and cancellation thereof.

SECTION 8. This act shall take effect and be in force from and after its passage and publication.

Approved March 4, 1879.

Published March 20, 1879.

OF VILLAGES.

(Chapter XL, R. S. 1878.)

Return of un
paid taxes.

* * * * *

SECTION 907. At the expiration of forty days from the date of said notice (a) given by the said street commissioner, he shall make out and deliver to the clerk of the town in which such village is situated, a certified list of the lots, pieces, or tracts of land in said village, upon which any such tax remains unpaid, with the amount of such delinquent tax upon each of said lots or parcels of land; and if such list be returned to said town clerk before the completion of the tax roll of said town for the same year, the said clerk shall add the said delinquent taxes to said tax roll, opposite to the description of the proper lots, pieces or parcels of land therein, and the said delinquent taxes shall be collected with and in the same manner as the town taxes. If such list shall be returned to the town clerk after the completion of the tax roll, and before the town treasurer's return of delinquent taxes, he shall deliver said list to the said treasurer, who shall collect the same with the other taxes in said village, and add what remains uncollected of said taxes to his list of delinquent taxes returned to the county treasurer, who shall collect the same or sell the lots, pieces or parcels of land aforesaid for such delinquent taxes; and all proceedings in relation thereto shall be the same in all respects as in the case of lands sold for other delinquent taxes. Every town treasurer or county treasurer who shall collect or receive any moneys on account of such delinquent taxes shall pay the same to the treasurer of the proper village and take duplicate receipts therefor, and file one of the said receipts with the clerk of his town or county.

* * * * *

(a) Notice to persons charged with street taxes to pay same in labor or materials.

SECTION 913. In case a village shall embrace parts of two or more towns, the town assessors of the several towns embraced therein shall meet at the place of meeting of the village board, or some convenient place in such village, together with the president and trustees, on or before the Saturday next preceding the time fixed for the return of the assessment rolls, and shall compose, with the president and trustees, a board who shall compare the valuations of taxable property in the several parts of such village, separated by town lines, and determine whether the relative valuation be just or not; if considered unjust, they shall then determine the relative proportion of village tax to be assessed upon the several parts, and shall certify their determination in writing, to the village clerk, to be filed by him. If any assessor or trustee shall refuse or neglect such duty, he shall forfeit fifty dollars.

Village embracing parts of towns, how property relatively valued.

SECTION 914. (As amended by chapter 212, Laws 1880). The village board shall, on or before the fifteenth day of October in each year, by resolution to be entered of record, determine the amount of corporation taxes to be levied and assessed on the taxable property in such village for the current year, which shall not exceed in any one year two per centum of the assessed valuation of such property. Before levying any tax for any specified purpose exceeding one per centum of the assessed valuation aforesaid, the village board shall, and in all other cases may, in its discretion, submit the question of levying the same to the village electors at any general or special election, by giving ten days' notice thereof prior to such election by publication in a newspaper published in the village, if any, and, if there be none, then by posting notices in three public places in said village, setting forth in such notices the object and purposes for which such taxes are to be raised, and the amount of the proposed tax. On or before the first day of November in each year, the village clerk shall deliver to the town clerk a copy of all such resolutions, certified under his hand and corporate seal. If such village be situated in two or more towns, he shall further certify how much of such tax is to be raised in each, according to the proportion established and certified to him by the board of town

Question of levy may be submitted to voters.

Duty of village clerk.

assessors and trustees mentioned in the last preceding section.

Assessment,
etc., of village
taxes.

Village orders
receivable in
payment of
tax.

Fees of the
town treasurer.

SECTION 915. Such village taxes shall be assessed upon all the real and personal property liable therefor, in a separate column in the tax roll of the town next thereafter issued and delivered to the treasurer for collection; and such taxes shall be collected in the manner provided by law for the collection of other taxes in such roll, and when so collected, shall be paid to the village treasurer or other person entitled to receive the same. The orders of a village shall be received and paid over by the town treasurer for all village taxes on his roll. The town treasurer shall be entitled to retain two per centum on all such money collected by him, and the same shall be in lieu of all such compensation for services rendered by him in the collection and paying over of such taxes. Any officer who shall neglect or refuse, on demand, to pay over any such taxes, or any other taxes or special assessments, levied by such village, when so collected by him, shall be liable on his official bond to an action therefor, with twenty-five per centum damages to be added thereto.

* * * * *

Collection of
final judgment
against village.

SECTION 923. Whenever a final judgment shall be obtained against any village, the judgment creditor, his assignee or attorney may file with the town clerk a certified transcript of such judgment or of the docket thereof, together with his affidavit, showing the amount due thereon and all payments, if any, and that the judgment has not been appealed from or removed to another court, or if so appealed or removed, has been affirmed; and thereupon the town clerk shall assess the amount thereof, with interest from the date of its rendition to the time when the warrant for the collection thereof will expire, upon the taxable property of such village, placing the same in a separate column on the next tax roll, and the same shall be collected and returned as town taxes are, and paid to the party entitled thereto. In case of a judgment against a village, embracing parts of two or more towns, a transcript and affidavit as aforesaid, shall be filed with the clerk of each town in which any part of such village is situated, and the town clerk in each

town shall assess on the taxable property of that part of such village situate in his town, the same proportion of the whole amount, with interest as aforesaid as is assessed on such parts for other village taxes in such year. Such proportion may be ascertained by the certificate of the village clerk, or the certificates of the several town clerks interested to each other, showing the amount of other village taxes certified by the village clerks to each town clerk. Whenever, for any cause, the amount which ought to be assessed on any such village, or part of village, as above provided, shall not be so assessed on the next tax roll, after the filing of such transcript and affidavit, the town clerk shall assess the same on the next or any subsequent tax roll, within two years thereafter. If any village shall have dissolved or abandoned its organization, pending an action, or before judgment against it shall have been paid, the town clerk shall, upon proofs made as above provided, assess the amount required upon the taxable property, included within the limits of such village at the time of its dissolution, placing the same in a separate column, and the same shall be collected accordingly.

(Ch. 194, Acts of a general nature, Laws of 1879.)

* * * * *

SECTION 3. The first and second sections of chapter one hundred and fifty-one of the general laws of 1867, and the first five sections of chapter one hundred and twenty-three of the laws of 1873, are hereby re-enacted; except that the words, "general or" where they occur in the first section of each of said chapters, are struck out; and the provisions so re-enacted shall only extend and apply to villages incorporated and existing under special laws heretofore passed, and not to any village incorporated or existing under any general statute.

The sections thus re-enacted are as amended as follows:

SECTION 1. (Chapter 151, General Laws, 1867.) When the time for the collection of village taxes under any warrant issued therefor, shall expire in any village incorporated under any special law of this state, the treasurer of such village shall make out and deliver to the clerk of

If not collected by village treasurer to be returned to town treasurer, and by him to county treasurer, and lands sold.

the town in which such village is situated, a certified list of the lots, pieces or tracts of land in said village upon which any such village taxes remain unpaid, with the amount of such delinquent tax upon each of said lots, pieces or parcels of land; and if such list is returned to said town clerk before the completion of the assessment roll of said town for the same year, the said clerk shall add said delinquent village taxes to said assessment roll, opposite to the description of the proper lots, pieces or parcels of land therein, and the said delinquent village taxes shall be collected with and in the same manner as the town taxes. If such list is returned to the town clerk after the completion of the assessment roll, and before the town treasurer's return of delinquent taxes, he shall deliver said list to the said treasurer, who shall collect the same with the other taxes in said village, and add what remains uncollected of said village taxes to his list of delinquent taxes returned to the county treasurer, who shall collect the same or sell the lots, pieces or parcels of lands aforesaid for such delinquent taxes, in the same manner as lands are sold for other delinquent taxes; and all subsequent proceedings in relation thereto shall be the same, in all respects, as in the case of lands sold for other delinquent taxes.

Money to be paid to village treasurer.

SECTION 2. Every town treasurer or county treasurer who shall collect or receive any money on account of such village taxes, shall pay the same to the treasurer of the proper village, and take duplicate receipts therefor, and file one of said receipts with the clerk of his own town or county.

May levy tax to build or repair sidewalks and gutters.

SECTION 1. (Ch. 123, General Laws 1873.) Whenever the board of trustees of any village incorporated under any special law of this state, shall determine to build or repair any sidewalk or gutter in any street, highway or alley of said village, said board of trustees may levy and cause to be collected, such sum or sums as they may estimate to be necessary for that purpose, by tax against the owners of the lots, pieces or tracts of land bounding that side of the street where said sidewalk or gutter is ordered to be built or repaired. Such part of the tax necessary to build or repair said sidewalk or gutter shall be assessed

against each of the owners of the lots, pieces or tracts of land along the line of said sidewalk or gutter, and bounding the same, as shall be sufficient to construct or repair said sidewalk or gutter along and contiguous to the respective lots, pieces or tracts of land of said owners. In case any such tax shall prove insufficient to pay the expenses of building or repairing any such sidewalk or gutter, said board of trustees shall have power to levy and collect such deficiency in the same manner as the original tax was levied and collected.

SECTION 2. Whenever the board of trustees shall levy any tax for the purpose of building or repairing any sidewalk or gutter, they shall make out and deliver to the street commissioner of such village a list of the persons and a description of the property taxed, together with a warrant for the collection and expenditure of said tax; and thereupon the street commissioner shall notify the persons named in such tax list, by publishing a notice two weeks in some newspaper published in said village, if there be one, or by posting up notices in three or more public places in such village, and shall specify in such notice a time or times not less than twenty days nor more than forty days from the date thereof, when the persons charged with taxes in such list may pay their taxes in labor, materials or money, and the persons charged with such tax may, at such time and place as may be required by the said street commissioner, pay their taxes in labor or materials; *provided*, the labor or materials offered in payment for such taxes are such as may be required by the said street commissioner.

shall deliver list of property holders to street commissioner; he shall give notice.

SECTION 3. At the expiration of forty days from the date of said notice given by the said street commissioner, he shall make out and deliver to the clerk of the town in which such village is situated, a certified list of the lots, pieces or tracts of land in said village, upon which any such sidewalk or gutter tax remains unpaid, with the amount of such delinquent tax upon each of said lots, pieces or parcels of land; and if such list shall be returned to said town clerk before the completion of the assessment roll of said town for the same year, the said clerk shall add said delinquent sidewalk or gutter taxes to said assess-

shall make out certified lists of lots, with amount of delinquent tax.

Treasurer to collect delinquent tax.

ment roll, opposite to the description of the proper lots, pieces or parcels of land therein, and the said delinquent sidewalk or gutter taxes shall be collected with and in the same manner as the town taxes. If such list shall be returned to the town clerk after the completion of the assessment roll, and before the town treasurer's return of delinquent taxes, he shall deliver said list to the said treasurer, who shall collect the same with the other taxes in said village, and add what remains uncollected of said sidewalk or gutter taxes to his list of delinquent taxes returned to the county treasurer, who shall collect the same or sell the lots, pieces or parcels of land aforesaid, for such delinquent taxes, in the same manner as lands are sold for other delinquent taxes; and all subsequent proceedings in relation thereto shall be the same in all respects as in the case of lands sold for other delinquent taxes.

Town and county treasurers to pay over to village treasurer.

SECTION 4. Every town treasurer or county treasurer who shall collect or receive any money on account of such sidewalk or gutter taxes shall pay the same to the treasurer of the proper village, and take duplicate receipts therefor, and file one of said receipts with the clerk of his town or county.

If owners are delinquent trustees may build or repair.

SECTION 5. Whenever any street commissioner shall have returned any lots, pieces or parcels of land for delinquent sidewalk or gutter taxes, as herein provided, the board of trustees of such village shall be authorized to build or repair such sidewalk or gutter at the expense of said village; *provided*, nothing in this section shall be construed to release said land or the owner thereof from the lien and payment of such delinquent sidewalk or gutter tax.

CHAPTER 265, LAWS 1885.

Respecting village and sidewalk taxes.

SECTION 1. Every village in this state which shall embrace parts of two or more towns, whether such village be incorporated under general or special law, or both, shall constitute a separate road district. No part of the streets or highways of any such village shall be in any road district established by the town board, nor be under the control of town officers; but all bridges in such villages shall be built, maintained and re-

paired by the town in which the same are situated.

SECTION 2. The village board of every such village shall, at the time of determining the amount of corporation taxes to be levied and assessed on the taxable property in such village for the current year, pursuant to the provisions of section 914, of the revised statutes, by resolution, to be entered of record, determine the amount of highway tax to be levied and collected in such village for the current year, which shall not exceed, in any one year, one-tenth of one per centum of the assessed valuation of such property, and shall in said resolution, determine the relative proportion of said highway tax, to be assessed upon the several towns embraced in such village, according to the proportion established for corporation taxes for said year.

Village board
to determine
amount of cor-
poration
taxes.

SECTION 3. Such highway tax shall thereafter be certified, assessed, collected and paid to the village treasurer at the time and in the manner, and subject to like penalties as provided by sections 914 and 915, of the revised statutes, for certifying, assessing, collecting and paying over corporation taxes in villages embracing parts of two or more towns; and when so collected and paid over, such highway tax shall be kept as a separate fund, and shall be expended under the direction of the village board, in the improvement of the streets and highways of such village.

Highway taxes
to be certified
to.

SECTION 4. Every such village shall be taken as embraced within the provisions of section 909, of the revised statutes.

SECTION 5. This act shall take effect and go into operation on the first day of October, 1885.

OF MUNICIPALITIES.

GENERAL PROVISIONS RELATING TO MUNICIPALITIES.

(Chapter XLI, R. S. 1878.)

How one city, village or town may be annexed to another.

SECTION 928. Any city, village or town may be annexed to another city, village, or town, contiguous, by ordinance, passed by a two-thirds vote of all the aldermen, trustees, or supervisors elect of each corporation desiring annexation, ratified at an election in each, as herein provided. Such ordinance shall fix the terms of annexation, which shall have the force and effect of contract when so ratified. The question of ratification shall be submitted to the electors of each such city, village and town, at any general or special election of which notice of such question shall have been given as required for special elections; the ballots in favor shall be, "For union ordinance," and those opposed, "Against union ordinance;" shall be deposited in a separate box, and canvassed and returned as required by law at general elections. If a majority of each and every such city, town and village, proposed to be united, shall be in favor of such ordinance, it shall be deemed ratified and adopted. But no such annexation shall affect or impair any rights or liabilities, either in favor of or against such corporations; and suits founded upon such rights and liabilities may be commenced and pending suits may be prosecuted and carried to final judgment and execution, the same as if annexation had not taken place. The result of such election shall be certified by the several clerks and inspectors thereof, and, together with such ordinances, shall be recorded by the clerk of such consolidated city, village or town.

Annexation not to affect existing rights of corporations, etc.

81 Wis. 120.
86 Wis. 263.

* * * * *

Licenses to show, etc.

SECTION 930. The town board of any town, village board or board of trustees of any village, or

common council of any city, to which no such power is granted by any special law, may license theatrical exhibitions, public shows, and all other exhibitions, upon such terms and conditions as they shall think fit, and may regulate the same as they shall think necessary for the preservation of decorum and the public peace (a); but all money received therefrom shall be paid to the proper treasurer; and no such license shall be of force longer than for the term of the board or council granting the same; *provided*, that no license shall be required for lectures on scientific, moral or literary subjects, or for concerts of music, if no other object be connected therewith.

42 Wis. 643.

Money from,
to whom paid.

FREE LIBRARIES.

SECTION 931. The common council of every city not exceeding in population fifty thousand inhabitants, and the village board or board of trustees of every village, and the town board of any town containing over two thousand inhabitants, shall have power to establish and maintain a public library and reading room, and for such purpose, may annually levy and cause to be collected, as other general taxes are, a tax not exceeding one mill on each dollar of the taxable property of such city, town or village, to constitute the library fund; which shall be kept by the treasurer, separate and apart from other money of the city, town or village, and be used exclusively for such purposes; *provided*, that no library shall be so established, and no such tax shall be levied, without the same be first submitted to vote, and be approved by a majority of the electors of such city, town or village.

Free public
library.Tax for free
library.

SECTION 932. For the government of such library and reading room there shall be a board of nine directors, appointed by the mayor of such city, the president of such village or the chairman of such town, with the approval of the respective common council, village board, or town board, from among the citizens thereof, at large; and

Directors how
appointed.

(a) A city licensed a public show of wild animals, and knowingly and carelessly allowed one of its principal streets to be obstructed by the exhibition, whereby the team of a person traveling upon the street took fright and became unmanageable. The city was adjudged liable in damages for resulting injury. *Little, Adm'r, v. The City of Madison*, 42 Wis. 643.

not more than one member of the council, or village or town board shall at any one time be such a director. Such directors shall hold their office for three years from the first day of July, in the year of appointment, and until their successors are appointed; but upon their first appointment they shall divide themselves, at their first meeting, by lot, into three classes, one-third for one year, one-third for two years, and one-third for three years, and their terms shall expire accordingly. All vacancies shall be immediately reported by the directors to the proper council, town or village board, and be filled by appointment in like manner, and if in an unexpired term, for the residue of the term only. No compensation whatever shall be paid or allowed any director.

Vacancies.

Officers of directors.

Duties of directors.

SECTION 933. Said directors shall immediately after their appointment, meet and organize, by the election of one of their number president, and by the election of such other officers as they may deem necessary. They shall make and adopt such by-laws, rules and regulations for their own guidance and for the government of the library and reading room as may be expedient, not inconsistent with this chapter. They shall have the exclusive control of the expenditures of all moneys collected for the library fund, and the supervision, care and custody of the rooms or buildings constructed, leased or set apart for that purpose, and such moneys shall be drawn from the treasury, by the proper officers, upon the properly authenticated voucher of the board of directors, without being otherwise audited. They may, with the approval of the mayor and common council of such city, the town board of such town, or the president and village board of such village, without which no lease, purchase or contract therefor shall be of any validity, lease and occupy, or purchase, or erect on purchased grounds, an appropriate building, not, however, employing in such purchase or building more than half the income in any one year. They may appoint a librarian and assistants, and prescribe rules for their conduct.

Library to be free for use.

SECTION 934. Every library and reading-room established under this chapter shall be forever free for the use of the inhabitants of the city, town or village where located, always subject to

such reasonable rules and regulations as the library board may find necessary to adopt and publish, in order to render the use of said library and reading-room of the greatest benefit to the greatest number; and they may exclude and cut off from the use of said library and reading-room, any and all persons who shall willfully violate such rules.

Persons violating rules, excluded from use.

Annual report.

SECTION 935. The said board of directors shall make an annual report to the city council, town board, board of trustees or village board, stating the condition of their trust, the various sums of money received from the library fund, and from all other sources, and how such money has been expended; the number of books and periodicals on hand; the number added by purchase, gift or otherwise during the year; the number lost or missing; the number of books loaned out, and the general character and kind of such books, with such other statistics, information and suggestions as they may deem of general interest.

SECTION 936. All persons desirous of making donations of money, personal property or real estate, for the benefit of such library, shall have the right to vest the title to the money, personal property or real estate so donated, in the board of directors created under this chapter, to be held and controlled by such board, when accepted, according to the terms of the deed or gift, devise or bequest of such property, and as to such property, the said board shall be held and considered to be special trustees.

Donations, etc. to vest in board.

SOLDIERS' MONUMENTS.

SECTION 937. Any town, city or village may, by vote, at any general or special election, determine to erect a suitable monument to the memory of any such residents of such town, city or village, as may have lost their lives in the military or naval service of the state or United States, or in rendering great state or national service, or in consequence of any such service, and order a tax therefor, not exceeding five mills on each dollar of the assessed valuation of all the taxable property in such town, city or village, for the year in which such tax is levied; which tax shall be collected with and as a part of the general taxes. Such question may be submitted by the

Soldiers' monuments.

Tax for, how levied and collected.

Vote for, how
taken.

Money, how
expended.

town or village board, or common council, by resolution, specifying the particular purpose and character of such proposed monument and the amount of tax to be levied therefor upon notice given as in case of a special election, and if adopted, the said board or council shall then pass the appropriate ordinance to carry the same into effect. Every such monument shall be erected, and the money raised therefor be expended, under the direction of the town or village board, or common council, or committees appointed by them, and no greater sum expended in the aggregate than was specified in the resolution so adopted.

* * * * *

MUNICIPAL LOANS.

Loans by mu-
nicipalities.

May give or-
ders.

Not negotiable.

May issue ne-
gotiable bonds.

SECTION 941. Where any tax has been ordered or levied to be collected on the next tax roll, and such tax roll shall have been placed in the hands of the treasurer for collection, any town board, village board or common council, may, in the temporary necessity, borrow money in anticipation of the payment of such tax, and apply the same to the purposes for which such tax was ordered or levied; and they may give orders on the treasurer, payable at a future date therefor, with or without interest; and for the payment thereof, such tax shall stand irrevocably pledged, and irrepealable. But no order on any town, city or village treasurer, shall in any case whatever be, or be held to be, negotiable according to the usage of merchants.

SECTION 942. Any county, town, village or city may, in accordance with the provisions of this chapter, issue its negotiable corporate bonds for the purpose of paying for any authorized subscription to the stock or mortgage bonds, or both, issued by any corporation or company, organized for building any railroad, whether of broad, ordinary or narrow gauge, or made of iron, steel or wooden rails. Any city or village may also borrow money and issue its negotiable bonds for any of the following purposes, viz.: The purchase or erection of public buildings; the purchase of fire engines or any apparatus for the extinguishment of fires; the purchase or erection of pumps, water

10 Wis. 185.
12 Wis. 617, 510.
13 Wis. 37, 432.
19 Wis. 634.
20 Wis. 79.
25 Wis. 167.
26 Wis. 23.
27 Wis. 147.
30 Wis. 597.
33 Wis. 288.
35 Wis. 333.

mains, reservoirs, or any other water-works; the grading, macadamizing or paving of streets; the laying out, altering or widening thereof, or of public grounds or parks; the purchase or improvement of cemeteries; the construction of school buildings; or in exchange for or compromise of any bonds previously issued and outstanding; *provided*, that the principal of such new bonds, shall not exceed the principal of the old bonds; or to accomplish any other purpose in the lawful power of such corporation.

SECTION 943. No bonds shall in any case be issued by any town, village or city, until the proposition for their issue for the special purpose thereof shall have been submitted to the people of such municipality, and adopted by a majority voting thereon; or, if to be issued to aid the construction of a railroad, until the proposition for the issue thereof shall have been accepted in one of the modes provided therefor in this chapter; nor shall any such bonds be issued payable after a period of twenty years; nor be issued until an ordinance or resolution shall have been lawfully passed, directing that there shall be annually levied a tax, in addition to all other taxes, sufficient to pay when due the interest annually to grow due on such bonds, and also to pay and discharge the principal thereof by the time the same shall be due; and every such tax shall be, after the issue of such bonds, irrevocable, and shall be annually levied and collected on all taxable property on the assessment roll of said municipality, and the money raised thereby shall be kept as a separate fund, irrevocably pledged to such purpose, and shall not be employed in any other.

Proposition for issue to be submitted to the people.

Railroad aid bonds, not to issue until proposition accepted.

Bond when payable.

SECTION 944. Whenever any municipality shall incur any indebtedness by the issue of bonds or municipal obligations, all the territory embraced within the limits of such municipality shall remain liable to the payment thereof, until such bonds or obligations are fully paid; and if any such territory shall be set off or taken therefrom after such indebtedness is incurred, and no other provision shall have been made by or according to law, for the apportionment and collection of such indebtedness, the county board of the county in which such territory is situated shall annually apportion to all such territory so set off or taken

Liability of municipal territory for payment of bonds.

10 Wis. 195.
12 Wis. 617.
19 Wis. 624.
20 Wis. 79.
25 Wis. 167.
26 Wis. 23.
27 Wis. 147.

from any such municipality, a *pro rata* portion of the amount of tax necessary to be raised in such year for the payment of principal and interest, in the ratio which the taxable property in such territory bears to the taxable property remaining liable to such debt in such municipality, according to the last assessed valuation thereof, and cause the same to be levied upon and collected from the taxable property of such territory, in addition to all other taxes imposed for such year, to be strictly applied to such purpose; and may prescribe the manner in which it shall be applied to the payment of such debt; and for the purpose of determining the proportion to be so assessed, they may act upon the certificate of the clerk of such municipality, showing the amount of tax necessary to be raised to pay such principal and interest required to be paid in such year.

Subscription to
railroad stock.

Company to
submit propo-
sition therefor.

SECTION 945. Whenever any such railroad company shall desire a subscription to its stock or bonds, or both, it shall deliver to the clerk of the county, town, village or city from which such aid is desired, a definite proposition in writing, signed by the president and secretary thereof, and sealed with its seal, which shall be, if accepted, irrevocably binding on such company, and which shall contain a statement of the manner in which it is desired that such subscription shall be made payable; and if to be payable in bonds, then of the amount of bonds desired, the time when payable, and whether payable before maturity at the option of such municipality; rate of interest they shall bear, and how, when and where payable, and also specifying when said bonds shall be delivered with reference to the time of the complete construction of such railroad from point to point; and within what time such road shall be so constructed as to be entitled to such aid or such bonds, or any installment thereof; and also that in consideration thereof, such railroad company will issue to such municipality such number of the shares of its capital stock or such of its mortgage bonds, or partly of the one or partly of the other, as will at their par value be equal to the principal sum of such bonds; and may propose that such bonds of the municipality and such stock or bonds, or both, of such company, shall be deposited in escrow with some trustee or trustees to be

named, to be delivered to the proper parties when and as the conditions of such agreement shall be complied with by the party entitled to the same thereunder. Every such proposition shall be immediately filed, with the date of its reception, indorsed and transcribed into the proper record book by the clerk receiving the same.

SECTION 946. (As amended by ch. 333, Laws 1883.) The proposition provided for in the last preceding section may be accepted, so as to become mutually obligatory, in either of two modes, as follows:

1st. Within three months after the filing of any such proposition with the proper clerk, the railroad company, may, by a written request, require notice to be given by such clerk, in the same manner hereinafter provided for giving notice of an election to consider such a proposition, that after a date in such notice named, not less than thirty, nor more than sixty days from date of notice, a petition to the proper authorities, of such municipality, praying that such proposition may be accepted and carried into effect, will be presented for their signatures to the resident taxpayers thereof, which petition, embracing a copy of such proposition, shall be appended as a part of such notice. If thereafter, and within four months from the filing of such proposition, with such clerk, the railroad company shall deliver to such clerk such petition, embracing a copy of such proposition, and bearing the signatures of a majority of the persons residing in such municipality, who were assessed for taxes on real or personal estate, in such municipality, as shown by the last assessment roll, which signatures shall be verified by the affidavit of some person who witnessed the signing of the same, then such proposition shall be deemed accepted, and the proper county board, town board, village board, board of trustees, or common council, shall carry the same into effect, in the manner hereinafter provided.

Notice required
by such clerk.
52 Wis. 327.

2d. At any time within three months after the receipt of such proposition, together with a request signed by at least twelve resident free-holders, that a vote be taken thereon, the respective county board, town board, village board, board of

Elections may
be ordered to
be held.

trustees or common council of the municipality to which the same is made, may, in their discretion, order an election to be held; and thereupon the clerk of such municipality shall publish a notice of such election, to be held at the usual places of holding elections therein, at a time to be fixed by him, not less than thirty nor more than sixty days from the date of such notice; which notice shall further contain a copy of the proposition made by such railroad company, and shall notify the legal voters thereof to deposit a ballot upon which shall be written or printed, "For the railroad proposition," or "Against the railroad proposition;" and such notice shall be posted in three public places in each election district in the municipality in which aid is desired, at least twenty days before the day of such election, and shall also be published at least three times before such election, in one newspaper in such city, village or town, if any be published therein; and if none be published therein, then in some newspaper in the county; and if the aid is asked of a county, in all the newspapers published therein; and if no newspaper be published in such city, village, town or county, then such notice shall be published in a newspaper published at the nearest place thereto in which one is published. Such election shall be held and conducted in the same manner that general elections in such counties, towns, villages or cities are by law required to be held and conducted, except that no registration of voters shall be required; and the votes cast at such election shall be counted, canvassed and returned in the same manner as the votes at such general election; and the canvassers shall make, certify, sign and deposit with the clerk of such county, town, village or city in which such election is held, a statement of the result of such election; and such certified statement shall be presumptive evidence of the number of votes cast for or against such proposition, and also that such election was regularly held and conducted according to law. But it is expressly provided that if the railroad company shall elect to pursue the first mode aforesaid, by causing such notice of the presentment of a petition for signature to be given in any case, then no election shall be held, and unless such proposition be accepted in the

time and manner provided in the first of said modes, it shall be deemed finally rejected.

SECTION 947. If any election, notified as provided in the last section, shall fail to be held on the appointed day, or if a majority shall vote against the railroad proposition, another election may be ordered by the proper board or council of such municipality, upon the same or a different proposition of such railroad company to be called, held and conducted in the same way; but not more than two elections shall be held in any one calendar year, upon propositions from the same railroad company in the same county, town, village or city, except on a petition signed by not less than one fourth of the legal voters who voted at the last general town meeting or charter election, as shown by the poll lists.

If proposition rejected, another election, how ordered.

SECTION 948. If any such proposition shall be accepted in the first of the modes hereinbefore provided, or if at any election, held as above provided, the majority of all lawful votes cast shall be for the railroad proposition, then the proposition so made by such company shall be deemed obligatory as a mutual agreement on such company and such municipality; and the respective county board, town board, village board or board of trustees, or common council of such municipality, shall, as soon as may be, cause subscription to be made on the books of such company for such stock and bonds thereof as were proposed to be issued, and shall provide by ordinance or resolution for executing and issuing such bonds of the municipality, in accordance with such agreement, by the proper officers; and the deposit of the same in escrow, if it be so agreed. But no such bonds shall be delivered, or be valid if delivered, until the road, to aid in the construction of which such bonds were voted, shall have been completed and in operation, by the passage of cars continuously from one terminus to such points as such company shall have agreed to construct the same, in consideration thereof. But if such municipality shall have voted for such railroad proposition, and shall have subscribed for such stock or bonds of such company, and in reliance thereon such company shall have faithfully performed its agreement, no defects or irregularities in any of the proceedings preliminary to such election shall

Proposition accepted to be obligatory.

Bonds not valid till road built and operated.

invalidate such agreement, or release such municipality or any officer thereof from the obligation and duty to carry out the same.

Municipalities
may subscribe
money, lands
or property.

SECTION 949. Any county, town, village or city is hereby authorized to make, to the capital stock of any railroad company, or to the mortgage bonds thereof, or both, a subscription, to be paid in money, lands or other property, instead of by the issue of bonds, upon a proposition to be made by the railroad company, and accepted in one of the modes and in the same manner and according to the same provisions, in all respects, hereinbefore provided for making such subscription, and the issue of bonds therefor. Such subscription shall be paid in one or more installments, at such times not exceeding three years from the completion of the contract therefor, and after such parts of the work of constructing the railroad aided shall have been done, as shall be agreed upon; and the last installment shall not be paid until the railroad shall have been completed, ready for passage of cars to the place to which it shall be agreed to be built in consideration of the aid so granted. If such agreement and subscription thereon shall be made, it shall be the duty of the proper officers of such county, town, village or city respectively, from time to time, to levy and collect such tax in the same manner as other taxes are levied, as shall be sufficient to pay the installments as the same shall fall due according to the terms of said agreement. No such subscription shall be made for an amount which, when added to the then existing indebtedness of such municipality, will make a sum exceeding five per centum on the value of the taxable property therein, to be ascertained by the last previous assessment for state and county taxes.

Restrictions on
subscription.

Tax to pay
subscription.

SECTION 950. In case any such subscription as in the last section mentioned shall be agreed to be paid in one sum, a tax sufficient to pay the same, but not in any case exceeding five per centum of the valuation of taxable property therein on the last assessment roll, shall be entered on the next assessment roll in a separate column, and be collected in all respects as other taxes of such municipality are collected, and the money raised kept separate and paid over to the railroad company entitled to the same. If any lands on which

such tax was levied shall be sold for the non-payment of the taxes thereon, such company shall have the right, if entitled by full performance on its part thereto to have such aid, to purchase at the tax sale any such lands, and have the amount of such purchase applied in payment of the aid so voted; and if the county shall bid in any such lands, said company shall have the right to select and have transferred to them, a sufficient amount of the certificates of sale of such lands to make up the amount of aid so voted; so that such company shall have the full proceeds of any such tax so voted, either in money if collected, or in tax certificates on the lands assessed therefor. But the same shall in no event be an indebtedness on such municipality voting such aid; nor shall any liability be deemed created on the part of such municipality to such company.

If lands sold for non-payment of tax, company may purchase.

SECTION 951. Any county, town, village or city is hereby authorized to guaranty and agree to pay the interest, for a period not exceeding ten years, on a given amount of the first mortgage bonds of any narrow gauge railroad company, in return for a sufficient amount of such first mortgage bonds of such company at the par value thereof, to equal the amount of such interest paid by such municipality, upon the acceptance, in the manner provided in section nine hundred and forty-six, of a proposition therefor. Such proposition shall be made and filed as provided in section nine hundred and forty-five, and shall contain a statement of the amount, date, rate of interest, and terms of payment of the bonds, and of the property described in the accompanying mortgage on which such guaranty is desired, and specify when such guaranties shall be delivered, with reference to the time of the complete construction of such railroad from point to point, and within what time such railroad shall be so constructed, as to be entitled to such guaranties and every portion thereof; and also that in consideration thereof such railroad company will issue to such municipality such number and amount of such first mortgage bonds, as will at their par value be equal to the amount of interest such municipality shall pay under such guaranties, and the time and manner of doing the same. If such proposition shall be so accepted, then the county board, town

Municipalities may guaranty payment of interest on bonds of narrow gauge railroads.

board, village board or board of trustees or common council, as the case may be, of such municipality, shall cause such a guaranty and agreement to be indorsed on each bond, so to be guaranteed, and signed by the proper officers, with the corporate seal affixed, and placed in the hands of the treasurer of such municipality.

Levy of tax to
pay interest.

Issue bonds for.

SECTION 952. The proper authorities of each and every municipality, which shall have made any such guaranty and agreement as provided in the preceding section, shall annually levy a tax upon the taxable property therein, sufficient to pay the interest so agreed to be paid as the same becomes due and payable; and each such railroad company shall, before the levy of any such tax, deposit with the treasurer of such municipality, for its use, an amount of its first mortgage bonds, equal at par to the amount of the interest so to be raised. No such treasurer shall deliver any such bonds guaranteed by the municipal authorities to such railroad company, or any other person, until full compliance with the terms of such proposition on the part of the company; but he may accept an order therefor, given to any parties from whom such company may buy any material for their road, conditioned that such bonds shall not be delivered thereon, until such full compliance with the terms of such proposition on the part of the company.

Before aid
asked, com-
pany to fix
rates of fare,
etc.

SECTION 953. Every narrow-gauge railroad company, before asking aid or submitting any proposition, for subscription to stock or bonds, to any municipality, shall, by resolution of their board of directors, fix the maximum rates of passenger fares, and of freights of all classes, to be charged by such company for the period of ten years from the date of such resolution; but no such rates shall exceed the rates fixed by any law of this state; and such company shall cause such resolution to be recorded in the office of the register of deeds of every county through or into which the road shall pass; and such rates shall not be increased by such company, during the time limited; and such resolution shall be made a part of any such proposition and agreement between such company and such municipality subscribing.

SECTION 954. Whenever any county, town, vil-

lage or city shall have heretofore received, or shall hereafter receive, any stock in any railroad company, it shall be entitled to all and the same rights, benefits and privileges as the stock of the same class held by any other person or persons; and the municipality receiving any such stock shall so long as it shall hold the same, or any part thereof, be a part owner of such railroad and its franchises; and the proper municipal board or common council of the municipalities holding such stock, shall appoint a person to vote thereon in behalf of such municipality; and such municipal board or common council may also sell and dispose of the said stock in such manner as to them shall seem best for the interest of such municipalities.

Municipality holding stock to be part owner of railroad.

SECTION 955. Whenever any county, town, village or city shall have failed to limit the time, within which any aid or subscription voted to any railroad company should be earned, by performance of the conditions on the part of the company then the proper board or common council thereof may fix and limit such time, but to be not less than a year from the date of giving notice to the railroad company thereof; and whenever the time shall have been limited, either by agreement or as above provided, the proper board or common council may, in their discretion, extend the time not exceeding one year beyond the period so limited; and if within the time so limited, or within the period to which such limit is extended, if extension be granted, the railroad company shall not have become entitled to the entire aid or subscription of such municipality, then all right or claim on the part of the railroad company, or any one claiming under it to such aid or subscription or to bonds, lands, moneys or taxes agreed to have been paid or delivered, to which the railroad company shall not have become absolutely entitled, shall be wholly forfeited, and all liability or obligation of such municipality, under such agreement, completely released and discharged; and the railroad company and every trustee or depositary who may hold any bonds, notes, orders, papers, moneys, deeds, contracts, property or evidences of indebtedness in escrow, in trust or deposited or pledged, which have so become forfeited, shall return and surrender the same to the proper municipal board

Limitation as to time in which subscription may be earned.

57 Wis. 456

Extension of time by municipal authority.

or common council, or any agent appointed by them, to be canceled.

Form of bonds and obligations.

SECTION 956. All bonds, guaranties or obligations, made or issued by any of the municipalities aforesaid, under the provisions of this chapter, shall be in such form, proper to carry out the conditions of the agreement, ordinance or resolution under which they shall be issued, as the respective municipal board or common council shall prescribe; those issued by a county shall be signed by the chairman of the county board and the county clerk; those by a town, by the chairman and town clerk; those by a village, by the president and village clerk; those by a city, by the mayor and city clerk; or by such person as shall be acting officially in any such offices respectively; and all such bonds, guaranties or obligations, shall be sealed with the corporate seal of the respective municipality, if there be any such seal.

By whom signed.

How vote taken.

SECTION 957. Whenever no provision shall have been made by law for the mode of taking any vote, upon the question of issuing any bonds, the village board or board of trustees of any village, or common council of any city, may direct and prescribe the manner in which such vote shall be taken, and ballots printed or written.

Sinking fund for payment of debt, how created.

SECTION 958. The county board, town board, village board, board of trustees or common council, of any county, town, village or city, which shall be indebted upon any bonds or obligations outstanding, may, for the purpose of establishing a sinking fund for the payment of such indebtedness, provide to be annually levied and collected, a tax upon the taxable property of such municipality, not exceeding six mills on each dollar of the assessed valuation thereof for the year in which it is levied, in addition to any tax required to be levied for the payment of the interest or principal, or both, in any such year; and may set apart for such sinking fund, all moneys received from licenses or other sources, the expenditure of which is not otherwise provided for by law, until such indebtedness shall be paid or extinguished; and all such moneys so raised and set apart shall thenceforward be exclusively held and used for the purposes of such sinking fund.

Sinking fund, how held and invested.

SECTION 959. The moneys belonging to such sinking fund shall be held by the municipal treas-

urer, and, under the direction of the respective board or common council of such municipality, be invested:

First. In the outstanding bonds of such municipality at any price not exceeding the principal and interest then accrued thereon, at which they can be purchased, and such bonds when purchased shall be immediately indorsed upon the face thereof, with a statement signed by the clerk of such municipality that the same have been taken up and belong to the sinking fund of such municipality, and cannot again be negotiated or made obligatory; and all such bonds shall be thereafter held by the municipal treasurer as a part of such sinking fund, and be deemed paid and extinguished, except that the interest thereon shall be annually levied and collected by tax, as if still outstanding, and be paid into such sinking fund as a part thereof, as long so it shall be necessary to maintain the same.

In outstanding bonds of municipality.

Second. In interest bearing bonds of the United States, or in loans upon bonds secured by mortgage upon unincumbered real estate, which shall be worth, aside from perishable improvements, at least three times the amount of such loan; and every such loan shall be payable at least one year previous to the time when the outstanding municipal bonds, to the payment of which it is to be applied, shall become due. All interest accruing and collected upon any such instrument shall belong and be added to the capital of such sinking fund.

In bonds of U. S. and real estate loans.

SECTION 960. If any officer upon whom any duty is imposed by this chapter shall willfully or negligently fail to faithfully and promptly discharge the same as required by law, he, and his sureties upon his official bond, shall be liable to the municipality, or to the parties aggrieved thereby, for all damages actually suffered in consequence of such failure.

Penalty for violation or neglect of duty by officers.

OF THE INDEBTEDNESS OF MUNICIPALITIES.

SECTION 960a. The present bonded indebtedness of any county, city, village or town in this state may be paid up or retired by the issuance of bonds of the same amount by the constituted and statutory authorities having charge and power, by

Municipal indebtedness, how refunded.

law, over the interests of the bond payers; *provided*, however, and only when such existing bonds can be retired or paid by the substitution of money realized by such issuance of new bonds in the place and stead of existing bonds bearing a rate of interest not exceeding that of the bonds so authorized to be retired or paid.

Exchange of
bonds.

SECTION 960*b*. In case any holder of existing bonds shall be willing to surrender bonds of any county, city, village or town, and accept in their place and stead other bonds at the same or a lower rate of interest, exchanging said existing bonds for such new bonds at a par value of each, then the constituted and statutory authorities of any such county, city, village or town prescribed in the preceding section, may, in their discretion, make such exchange by the retiring of such existing bonds and the substitution and issuance therefor of such new bonds, and may extend the date of payment of such substituted bonds for a period not exceeding ten years beyond the time when the principal of such existing bonds, so surrendered, would have become payable; *provided*, that no such extension shall be for more than twenty years from the time such debt was created, except in case of bonds issued prior to the first day of November, A. D. one thousand eight hundred and seventy-four.

Extension of
payment.

When new
bonds may be
issued.

SECTION 960*c*. (As amended by Ch. 8, Laws 1881.) Whenever any bonds of any county, city, village or town, shall become due and payable, or in anticipation thereof, the constituted or statutory authorities having the power by law, over the interests of the bond payers, may, in their discretion, cause to be issued, in proper form, new bonds having not more than twenty years to run. All bonds which may be issued for the purposes prescribed in sections nine hundred and sixty *a*, nine hundred and sixty *b*, and this section, shall first be offered for sale within the county, city, village or town issuing them, for a period of thirty days; notice of such sale shall be by advertisement in a newspaper printed in such county, city, village or town, if one be printed therein, and if not, then by advertisements posted in at least five public places in such county, city, village or town. The terms of sale of such bonds shall be that, to the person bidding the highest sum, not less than par,

and offering to accept the lowest rate of interest for the whole or any part of said bonds, the said bonds in whole or in part shall be issued. If the bonds so offered for sale shall not have been sold, as authorized by this act, or if any portion of them shall remain unsold at the expiration of thirty days, such bonds so remaining unsold may then be disposed of by the statutory authorities in such manner as in their judgment will be for the best interests of the bond payers; but in no case shall new bonds be sold except at a rate of interest as low as that borne by the bonds for which the new bonds are to be exchanged. Such new bonds shall bear date and draw interest from the date of payment of the bonds so retired, and shall be made payable at some stated place within the state of Wisconsin, and during the period of thirty days in which they shall be offered for sale within the county, city, village or town issuing them, as provided in this section, they shall be of denominations not exceeding one hundred dollars, nor less than twenty-five dollars; but after the expiration of said period of thirty days, they may be of any denomination in the discretion of the constituted and statutory authorities empowered to issue them.

Where payable.

SECTION 960d. Moneys arising from the sale of new bonds as provided in the foregoing section, shall be applied to the payment and satisfaction of the bonds then becoming due and payable.

Avails of bonds how applied.

SECTION 960e. The principal and interest of all bonds authorized to be issued pursuant to the provisions of this act shall be paid in the lawful money of the United States.

In what bonds payable.

56 Wis. 269.

OF RESIGNATIONS, VACANCIES AND REMOVALS FROM OFFICE.

(Chapter XLII, R. S., 1878.

SECTION 961. Resignations shall be made as follows:

Resignations.

* * * * *

6. By a town officer, to the chairman of the town.

Town officers.

7. By a village officer, to the president of the village.

Village officers.

13—T. L.

School district
officers.

8. By a school-district officer to the district board.

* * * * *

Vacancies how
caused.

17 Wis. 658.

SECTION 962. Every office shall become vacant on the happening of either of the following events:

Death.

1. The death of the incumbent.

Resignation.

2. His resignation.

Removal.

3. His removal.

Change of res-
idence.

4. His ceasing to be an inhabitant of this state; or if the office be local, his ceasing to be an inhabitant of the district, county, town, city or village by or for which he shall have been elected or appointed, or within which the duties of his office are required to be discharged.

Conviction of
crime.

5. His conviction of any infamous crime, or of any offense involving a violation of his official oath.

Decision de-
claring elec-
tions, etc., void.

6. The decision of a competent tribunal declaring void his election or appointment.

Failure to give
or renew bond.

7. The neglect or refusal of any person elected or appointed, or reelected or reappointed to any office, to give or renew his official bond, or to deposit the same in the manner and within the time prescribed by law.

Or additional
bond.

8. The neglect or refusal of any officer in office to execute and file an additional bond, when lawfully required, in the manner and within the time so required or prescribed by law.

Death or de-
clination before
incumbency.

9. The death or declination in writing, of any person elected or appointed to fill a vacancy, or for a full term, before he qualifies, or his death or such declination before the time when, by law, he should enter upon the duties of his office, to which he was elected or appointed.

Generally.

10. On the happening of any other event which is declared by any special provision of law to create a vacancy.

* * * * *

Circuit judges
may remove
town officers.

SECTION 976. The judge of the circuit court may in like manner remove any town officer of any town in his circuit, whenever in his opinion, it shall be proved that such officer has been guilty of willful and corrupt official misconduct, or of willful neglect of duty. But such removal shall

be made only upon charges preferred by a taxpayer and elector; and the order of removal shall be filed in the office of the town clerk. In case of any such removal, the judge shall appoint some competent person to fill the vacancy until his successor shall be elected and qualified.

OF THE CENSUS.

(Chapter XLV, R. S. 1878.)

State census,
when taken.

SECTION 991. If no other law be passed for taking a census, the same shall be taken in the year one thousand eight hundred and eighty-five, and every tenth year thereafter, in the manner herein provided.

* * * * *

Clerks of
towns, etc., to
take enumeration,
etc.

SECTION 994 (as amended by sec. 2, ch. 161, Laws 1885). The town clerks of the several towns, and the clerks of the several cities and villages, under the direction of the county clerks, are authorized and required to take the enumeration of the inhabitants, collect the statistics, enroll the militia, and enumerate all those who served as soldiers or sailors in the United States army or navy in the late war, then residing in their respective towns, cities and villages; and in case there be no organized town, or there be no such clerk in any district comprising the whole or a part of any county, the county clerk shall appoint one or more assistants, who shall have power to perform the service required of town clerks by this chapter; and all the said clerks are authorized to appoint such assistants as they may find necessary for the performance of the duties required by this chapter.

Clerks to take
oath.

SECTION 995 (as amended by sec. 3, ch. 161, Laws 1885). Each town, city and village clerk, and each of their assistants, shall take and subscribe an oath before entering upon the discharge of such duties, that he will make a true and exact enumeration of all persons resident, a true enrollment of all persons liable to military duty, and a true enumeration of all those who served as soldiers or sailors in the United States army or navy in the late war, then residing within his town, city, village or district, and will faithfully collect all the other statistics therein as required by law, and a

true return thereof make in pursuance of the provisions of this chapter, according to the best of his ability; which oath shall be returned with the census taken by each such person respectively, to the county clerk.

SECTION 996 (as amended by sec. 4, ch. 161, Laws 1885). The said clerks and their assistants shall, on the twentieth day of June in the year in which a census is to be taken, commence taking the enumeration of the inhabitants, collecting the statistics, enrolling the militia, and enumerating all those who served as soldiers or sailors in the United States army or navy in the late war, then residing in their several districts, as required by law, and for that purpose shall call at every dwelling house therein, and by personal inquiry of the head of every family and of other persons, ascertain the matters required to be ascertained and reported by them; and in such enumeration and enrollment, they shall include only persons whose place of residence shall be in said city, town, village or district, on the first day of June of said year, and make a separate enumeration of all Indians not taxed; and complete their work on or before the first day of August thereafter, and deliver to the county clerk a true and accurate enumeration of all the persons within their respective towns, cities, villages and districts, and a full and correct collection of the statistics required to be collected therein, and an enrollment of the militia, and enumeration of all ex-soldiers and sailors, which enumeration, collection and enrollment shall be set forth in the schedules and forms furnished by the secretary of state, and in the manner and form required by him.

When to commence.

Their duties.

SECTION 997. (As amended by section 5, chapter 161, Laws 1885, and chapter 58, Laws 1885.) The town clerk of any town in which there shall be situated a village, or any part thereof, shall not take the census, collect the statistics, enroll the militia, or enumerate the ex-soldiers and sailors in such village; and the village clerk of every village which is not specially incorporated as a municipality, distinct and independent from the town, shall in taking such census, separately enumerate upon the same form all the inhabitants thereof, residing in each town, any part of which is included in such village. Provided, that it shall be

Amendment, further duties of clerk.

In villages how taken.

the duty of the town clerk of any town in which there is situated an unincorporated village, to separately enumerate the inhabitants of said village.

Duty of town
clerks.

SECTION 997a. (Sec. 2, chapter 271, Laws 1880). It is hereby made the duty of the town clerks of the several towns in this state, to make reports of pauperism and crime to the county clerks of their respective counties, and the board of supervisors of the several towns shall fix their compensation and audit their accounts for services rendered.

* * * * *

Amendment.
penalty for re-
fusing to an-
swer questions.

SECTION 1000. (As amended by section 9, chapter 161, Laws 1885.) Every person over twenty years of age, who shall refuse to answer truly, to the best of his ability, any question which may be lawfully put to him by the clerk authorized to take the census in the district in which such person resides, for the purpose of taking such census or collecting the statistics, or enrolling the militia, or enumerating the ex-soldiers and sailors of such district, as required by this chapter as amended, shall forfeit twenty-five dollars.

Forfeiture for
official neglect.

SECTION 1001. (As amended by section 10, chapter 161, Laws 1885.) Every county, town, city or village clerk, or assistant appointed, who shall have accepted such office or appointment, who shall neglect or refuse to perform the duties required of him in taking or returning the census collecting or returning the statistics, enrolling or returning the militia, enumerating or returning the ex-soldiers or sailors, as directed in this chapter as amended, or who shall willfully make any false certificate or return thereto, shall forfeit two hundred and fifty dollars.

* * * * *

Compensation
allowed.

SECTION 1003. (As amended by section 12, chapter 161, Laws 1885.) The persons appointed and authorized by this chapter to take the census, collect the statistics, enroll the militia, and enumerate the ex-soldiers and sailors, shall be allowed the following compensation for their services in taking the same. Clerks of cities and villages, shall be paid at the rate of one dollar and fifty cents for every one hundred persons enumerated, and the same for every one hundred persons lawfully enrolled in the militia by them respectively,

and the same for every one hundred persons enumerated who served in the United States army or navy during the late war. Town clerks and assistants appointed by the county clerks shall be paid at the rate of three dollars for every one hundred persons enumerated by them respectively, and one dollar and fifty cents for every one hundred persons lawfully enrolled in the militia, and the same for every one hundred persons enumerated who served in the United States army or navy as aforesaid; and in all counties where the population does not exceed five thousand, according to the last census taken under the authority of the United States, said town clerks and assistants shall receive the sum of five dollars for every one hundred persons enumerated, and one dollar and fifty cents for every one hundred persons lawfully enrolled in the militia, and the same for every one hundred persons enumerated who served in the United States army or navy as aforesaid, by them respectively; and each county clerk shall be allowed for making a copy and return to the secretary of state, ten dollars, in case the schedule of the enumeration of the inhabitants returned by him shall contain one thousand persons or less; and three dollars for every one thousand, which the schedule of enumeration aforesaid returned shall contain exceeding that number, and one cent for each person enrolled in the militia, and the same for each ex-soldier and sailor enumerated in his county; and each clerk, assistant and county clerk, shall receive in addition twenty-five per centum of the amount of his compensation as above fixed, for the enumeration of the inhabitants, for his services in taking, collecting and returning the statistics, as required by this chapter; which shall be in full of all services required of him, under the provisions of this chapter. If any clerk or his assistant shall fail to make any of such returns on or before the first day of August, he shall forfeit five per centum of all his compensation for each day thereafter, to the time of his making such return. The accounts for taking the census, collecting the statistics, enrolling the militia, and enumerating the ex-soldiers and sailors, as herein provided, shall be certified by the respective county clerks, which

Of county clerks.

Forfeiture for failure to make returns.

certificate shall show the date of each return, and the accounts so certified shall be audited by the secretary of state and paid out of the state treasury.

OF STATISTICS.

STATISTICS.

(Chapter XLVI, R. S. 1878.)

SECTION 1004. (As amended by ch. 236, Laws 1881.) The clerk of each town and city, and of each village which collects their taxes independently of the town, and the town clerk of each town in which any village is situated, the taxes for which village are collected by the town treasurer, shall annually at the time he is required by law to deliver the tax roll to the town, city or village treasurer, make out and transmit to the county clerk (1), on blanks furnished by the secretary of state, a statement showing the assessed valuation of all property within his town, city or village; and separately the amount of all taxes levied therein by said town, city or village, including school-district, highway, street and sidewalk taxes for the current year, and the purposes for which the same were levied; also a complete and detailed statement of the bonded and other indebtedness of his town, city or village, and of the accrued interest, if any, remaining unpaid, and the purposes for which said indebtedness was incurred.

Town, city and village clerk to transmit certain statistics.

2. Any town, city, village or county clerk who shall neglect or refuse to make true return as herein provided, shall forfeit not less than twenty-five nor more than one hundred dollars.

Penalty for neglect.

* * * * *

SECTION 1010. It shall be the duty of the assessor of each town in this state, at the time of making the annual assessment of property, to collect sta-

Town assessors to collect statistics of farm products, etc.

(1) Forms under this section will be furnished by secretary of state.

tistics in relation to the principal farm products of this state as follows, to wit: Of wheat, corn, oats, barley, rye, potatoes, root crops and cranberries, the number of acres devoted to the cultivation of each respectively, for the current year, and also the number of bushels of each respectively raised in the preceding year; of apples, the number of acres in orchard, the number of trees of bearing age the current year, and also the number of bushels raised the preceding year; of flax, hops and tobacco, the number of acres the current year, the number of pounds raised the preceding year; of cultivated grasses, the number of acres the current year, the number of tons raised the preceding year; of growing timber, the number of acres; of milch cows, the number and value; of butter and cheese, the number of pounds manufactured of each, the preceding year; of clover and timothy, the number of acres of each harvested for seed the preceding year, and the number of bushels of each obtained therefrom; and said assessors shall make duplicate certificates of such statistics, one of which he shall file in the office of the town clerk of his town, and the other with the clerk of the board of supervisors of his county, on or before the first day of July of the same year. The county clerk shall, on or before the fifteenth day of July in each year, forward to the secretary of state, to be kept in his office, a certificate of the aggregate number of acres and the amount of yield of each of said products in his county, as ascertained and compiled from the certificates of said assessors.

* * * * *

Duties of assessors in making reports.

SECTION 1012. Each assessor shall, when making the assessment roll for the year one thousand eight hundred and eighty, and for every fifth year thereafter, enter on the blanks so furnished to him in regular order, in the name of the owner, if known, and from the best information he can obtain, a correct description of all real and personal property then exempt from taxation in his town, ward, city or village, by subdivisions three, four, five, thirteen, fourteen, fifteen and seventeen of section one thousand and thirty-eight, together with a statement of its value, for what purpose used, and the rent, if any, obtained therefor. In enter-

ing on such blanks the right of way or track of any railroad or plank-road company, it shall be sufficient to state its length in miles. The list of such exempt property, when completed, and on or before the first day of August, shall be delivered by the assessor to the county clerk, who, on or before the first day of October next thereafter, shall make duplicates of each thereof, and transmit such duplicates to the secretary of state, and file the originals in his office.

* * * * *

SECTION 1014. (As amended by Chap. 229, Laws 1880.) Each assessor, shall, when making the annual assessment for the year 1885, and for every tenth year thereafter, ascertain and enter upon a blank prepared for that purpose and furnished by the secretary of state, the name and surname in full of each deaf and dumb person, blind person, insane person and idiotic person in his assessment district, the age, color, sex, occupation, and place of birth of such persons; whether such persons are educated or not; the names in full of their parents, the number of children of such parents, and what the relation of blood, if any, existed between such parents; and the number of deaf and dumb, blind, insane and idiotic children of such parents; and return the same to the county clerk at the time of completing the assessment roll for said assessment district. The county clerk shall, on or before the first day of September, in said years, transmit the same to the secretary of state, who shall compile and tabulate such returns, and include a summary statement thereof in his annual report for said years.

Assessor to report as to deaf and dumb, etc.

Duty of county clerk.

SECTION 1015. If any town, city or village clerk shall have failed or neglected to transmit to the county clerk the statement required by section one thousand and four, or if any assessor shall have failed or neglected to return the complete lists of exempt property, as required by section one thousand and twelve, or the schedule of the deaf and dumb, blind, insane and idiotic persons, as required by section one thousand and fourteen, or to make and file with the county clerk the certificate required by section one thousand and ten, for ten days after the time he is required by law to transmit the same, the county clerk shall in

Messenger may be sent for statements.

Compensation
to messenger.

either case send a messenger to such clerk or assessor, who has so failed or neglected to procure the same, and such messenger shall be entitled to receive three dollars per day and ten cents per mile for each mile necessarily traveled in the discharge of his duty, to be paid out of the county treasury on the order of the chairman of the county board and county clerk. The amount so paid shall be charged to the proper town, city or village, and added to and collected with the next county tax apportioned thereto. The county clerk shall, immediately after having sent any such messenger, notify the treasurer of the proper town, city or village of the amount of the expense so incurred; and such treasurer shall deduct such amount from the compensation of such delinquent clerk or assessor.

* * * * *

Municipal
clerks to fur-
nish secretary
statements of
indebtedness.

SECTION 1017. Each county, city, village, town and school-district clerk shall, whenever required by the secretary of state, furnish to him a full and complete statement, showing the bonded and all other indebtedness of his respective county, city, village, town or school-district, the purposes for which the same was incurred, and all accrued interest, if any, remaining unpaid.

Secretary to
furnish blanks,
etc., for statis-
tics.

SECTION 1018. The secretary of state shall prepare and furnish to the proper officers, all blanks and instructions necessary for carrying out the provisions of this chapter (a).

Forfeitures up-
on clerks for
neglect of
duty.

SECTION 1019. Every clerk of any town, city, village or school-district, and every assessor who shall fail or neglect to perform any duty required of him by any of the provisions of this chapter, shall, for every such neglect or failure, forfeit not less than twenty nor more than fifty dollars, and it shall be the duty of the county clerk to cause every such forfeiture to be prosecuted for. Every county clerk and register of deeds who shall fail or neglect to perform any duty required of him by this chapter, shall, for every such neglect or failure, forfeit not less than twenty-five nor more than one hundred dollars; and it shall be the duty of the secretary of state to cause every such forfeiture to be prosecuted for.

(a) Section 1018 requires secretary of state to furnish all blanks and instructions under this chapter.

OF TAXATION.

OF THE ASSESSMENT OF TAXES.

(Chapter XLVIII, R. S. 1878.)

SECTION 1030. The valuation of property for taxation and assessment and collection of taxes in all the towns, cities and villages of this state shall be made according to the provisions of this title, unless otherwise specially provided, by the proper officers elected or appointed therein, pursuant to law. If no provision be otherwise made therefor, there shall be elected at the annual charter election, one assessor for each ward of a city or village, specially incorporated and authorized to assess and collect taxes, independently of the town. When there shall be in any town, ward, village or city, constituting a single assessment district, more than one assessor, the assessors therein shall, in the discharge of their official duties, act together as an assessment board, and the concurrence of a majority of such board shall be necessary to determine any matter upon which they are required to act. The term assessor as used in this chapter is intended to embrace such board of assessors.

Valuation of property for taxation.

Assessors of cities, and villages.

Board of assessors to act together.

SECTION 1031. The term, "assessment district," is used to designate any subdivision of territory, whether the whole or any part of any municipality in which by law a separate assessment of taxable property is made by an assessor or assessors, elected or appointed therefor.

Definition of "assessment district."

SECTION 1032. The secretary of state shall prescribe and furnish to the several county clerks forms for the assessment rolls, tax rolls, blanks and returns required for the due execution of the provisions of this chapter. Every county clerk shall, at the expense of the county, annually procure to be prepared, according to such prescribed forms, and furnish to each assessor in the county

Secretary of state to furnish forms of assessment rolls, etc.

County clerks
to procure as-
sessment and
tax rolls.

in due season for use, an assessment roll, and to each town clerk a tax roll, and all other books, blanks and papers necessary to be used by such assessors and town clerks in the discharge of their duties under this chapter.

Regarding as-
sessment of
taxes.

SECTION 1033. (As amended by chapter 217, Laws 1885.) The assessors of each assessment district shall begin on the first day of May in each year, or as soon thereafter as practicable, and proceed to make an assessment of all the real and personal property liable to taxation in such district. All personal property shall be assessed as of the first day of May in such year, but the assessment of merchants' and manufacturers' stock shall be based on the average amount held during the preceding year ending on the first day of May. Real property may be assessed at any time between the first day of May and the time of the sitting of the board of review for such district.

WHAT TO BE ASSESSED.

Property to be
assessed.

SECTION 1034. Taxes shall be levied upon all property in this state, except such as is exempted therefrom (a).

10 Wis. 242; 11 id. 1, 470; 14 id. 618; 16 id. 185; 19 id. 615.

Swamp lands
when assess-
able.

SECTION 1034a (Chapter 296 Laws 1883). All swamp and overflowed lands which have been heretofore or may be hereafter contracted for sale by any county board or county commissioners of any county in this state, pursuant to any law, shall be assessed for taxation and taxed as lands owned by individuals are now assessed and taxed, and shall be subject to sale for taxes, and deeds upon such sale shall issue at the same time and in the same manner as is now provided by law, in cases of sale of lands of individuals for taxes, and the issuance of tax deeds upon such sales. Said lands may be redeemed from such sale in the manner prescribed in chapter 50, of the revised statutes of 1878, and the acts amendatory thereof, and all the provisions of

(a) The intentional omission of taxable property by the assessor, materially affecting the equality of taxation and increasing the burden of the party complaining, will avoid the tax, but the unintentional omission of such property by the officer attempting in good faith to carry out the requisitions of the law, will not. [*Smith v. Smith et al.* 19 Wis. 615.]

said chapter 50, and the acts amendatory thereof, shall be applicable to such redemption, including penalties, limitations, actions, and all proceedings therein enumerated. All tax deeds issued under the provisions of this act, shall be deemed conclusive evidence of the title of the grantee therein named, his heirs or assigns, after the time limited in said chapter 50, as the time in which actions may be brought, to redeem from tax sales, or to set tax deeds aside as against any and all persons, except the state or county. In case any of the contract price of said lands is unpaid, the grantee in such tax deed named, his heirs or assigns may, after the time last above limited, pay such sum and interest, and shall thereupon be entitled to a patent from the state, on the lands described in such tax deed, and if all of said contract price and interest shall have been paid, such grantee, his heirs or assigns, shall, after the time last above limited, be entitled to a patent from the state on lands described in such tax deed.

SECTION 1035. The terms, "real property," "real estate" and "land," when used in this title, shall include not only the land itself, but all buildings, fixtures, improvements, rights and privileges appertaining thereto.

"Real property" and "land" terms defined.

SECTION 1036. The term, "personal property," as used in this title, shall be construed to mean and include toll bridges, saw logs, timber and lumber, either upon land or afloat; steam-boats, ships and other vessels, whether at home or abroad; buildings upon leased lands, if such buildings have not been included in the assessment of the land on which they are erected; ferry-boats, including the franchise for running the same; all debts due from solvent debtors, whether on account, note, contract, bond, mortgage or other security, or whether such debts are due or to become due; and all goods, wares, merchandise, chattels, moneys and effects, of any nature or description, having any real or marketable value, and not included in the term real property, as above defined.

"Personal property" term defined.

SECTION 1037. The improvements on all lands situated in this state, which shall have been entered under the provisions of the act of congress, entitled, "An act to secure homesteads to actual

Improvements on homestead entries under U. S. laws, how taxed.

settlers on the public domain," approved May twentieth, one thousand eight hundred and sixty-two, and which shall be actually occupied and improved by the person so entering the same, or his heirs, shall be subject to taxation, and such improvements shall be assessed as personal property. All taxes levied thereon shall be collected out of the personal property of the occupant of such lands, and in no other manner.

Exemption.

U. S. and state
lands.

52 Wis. 52.

Lands munic-
ipalities.

Property of re-
ligious socie-
ties, etc.

Property of
agricultural so-
cieties.

Fire engines,
buildings and
grounds.

Property of
Indians.

SECTION 1038. The property in this section described is exempt from taxation, to wit:

1. That owned exclusively by the United States, or by this state; but no lands contracted to be sold by this state shall be exempt.

2. That owned exclusively by any county, city, village, town or school district; but lands purchased by counties at tax sales shall be exempt only in the cases provided in section eleven hundred and ninety-one.

3. Personal property owned by any religious, scientific, literary or benevolent association, used exclusively for the purposes of such association, and the real property, if not leased, or not otherwise used for pecuniary profit, necessary for the location and convenience of the buildings of such association and embracing the same, not exceeding ten acres; and the lands reserved for grounds of a chartered college or university, not exceeding forty acres; and parsonages, whether of local churches or districts, and whether occupied by the pastor permanently, or rented for his benefit. The occasional leasing of such buildings for schools, public lectures or concerts, or the leasing of such parsonages, shall not render them liable to taxation.

4. Personal property owned and used exclusively by the state or any county agricultural society, and the lands owned and used by any such society exclusively for fair grounds.

5. Fire engines and other implements used for extinguishing fires, owned or used by any organized fire company, and the buildings and necessary ground connected therewith, owned by such company, and used exclusively for its proper purposes.

6. The property of Indians who are not citi-

zens, except lands held by them by purchase (a).

29 Wis. 338; 33 Wis. 505; 51 Wis. 63.

7. Lands used exclusively as public burial grounds, and tombs and monuments to the dead therein. Burial grounds, tombs, etc.

8. Pensions receivable from the United States. Pensions.

9. Stock in any corporation in this state which is required to pay taxes upon its property in the same manner as individuals. Stock in corporation.

10. So much of the debts due or to become due to any person, as shall equal the amount of *bona fide* and unconditional debts by him owing. Debts due equal to debts owing.

13 Wis. 437; 57 Wis. 143; 100 U. S. 539.

11. Wearing apparel, family portraits and libraries, kitchen furniture and growing crops. Wearing apparel, etc.

12. Provisions and fuel provided by the head of a family to sustain its members for six months; but no person paying board shall be deemed a member of a family. Provisions and fuel.

13. All the personal property of all insurance companies, that now are or shall be organized or doing business in this state. Personal property of insurance companies.

14. The track, right of way, depot grounds and buildings, machine shops, rolling stock, and all other property necessarily used in operating any railroad in this state, belonging to any railroad company, including pontoon or pile and pontoon railroads, and shall henceforth remain exempt from taxation for any purpose, except that the same shall be subject to special assessments for local improvements in cities and villages (b), and all lands owned or claimed by any such railroad company not adjoining the track of such company, shall be subject to all taxes. The provisions of this subdivision shall not apply to any railroad that now is or shall be operated by horse power, whether now or hereafter constructed in any city or village. Railway property.
22 Wis. 54
29 Wis. 116.
31 Wis. 271.

(a) The term "purchase" in subdivision 7, is used in its popular sense meaning the acquisition of lands for a valuable consideration paid therefor. Land so acquired by a person of Indian blood, or by his ancestor, is not exempt from taxation. [*Quinney v. The Town of Stockbridge*, 33 Wis. 505.]

(b) Elevators are not necessarily used in operating a railroad, and are not exempt from taxation. [*Milwaukee & St. Paul Railway Company v. The City of Milwaukee*, 34 Wis. 271.]

Warehouses and sheds, into which freight is received from propellers and consigned over a railroad, and from the railroad to be shipped by propeller, with the land which they occupy, are held exempt from taxation. [*Id.*]

Certain lots and blocks in a marsh, purchased for depot purposes, but never reclaimed or used for that purpose, are held liable to taxation; also dwelling houses owned by the railroad corporation. [*Id.*]

Under what circumstances a railroad can might be exempt, see 29 Wis. 117.

Property of
telegraph com-
panies.

15. The property, except real estate, of all companies which are or shall be engaged in the business of telegraphing in this state.

Home of
Friendless in
Milwaukee.

16. The real estate of the Home of the Friendless in the city of Milwaukee, not exceeding one lot in amount, is exempted so long as the same shall continue to be used as such home.

Property of
corporations
for encourage-
ment of indus-
try.

17. All property of any corporation or association formed under the laws of this state, for the encouragement of industry by agricultural and industrial fairs and exhibitions, which shall be necessary for fair grounds, while used exclusively for such fairs and exhibitions; *provided*, the quantity of lands so exempt shall not exceed forty acres.

Tree belts.

18. Such tree belts as are or may be planted and maintained in compliance with chapter sixty-one of these statutes.

Public Parks.

19 (Ch. 376, Laws 1885.) All land used as a public park or monument ground belonging to any military organization and not used for gain, shall be exempt from taxation.

Exempt from
taxation.

19a (Ch. 203, Laws 1883). The property of any corporation or association formed under the laws of this state, used exclusively for the purpose of manufacturing oxide of zinc, or metallic zinc, from native ores of the state, shall be exempt from taxation for a period of three years.

Exempt.

19b (Sec. 6, ch. 162, Laws 1882). The armory owned by any regiment, battalion or company, used exclusively for the purposes of such organization, shall be exempt from all taxes and assessments, except local assessments for the improvement of streets, sidewalks, sewerage or drains.

Exempt from
taxation.

19c (Ch. 309, Laws 1883). All of the real and personal property of the Turner societies, which are or may be incorporated under the laws of this state, which is used exclusively for educational purposes, is hereby exempted from taxation.

WHERE TO BE ASSESSED.

Real property
where assessed.

SECTION 1039. All real property not expressly exempt from taxation shall be entered upon the assessment roll in the assessment district where it lies.

SECTION 1040 (as amended by ch. 244, Laws 1879, ch. 165, Laws 1880, and ch. 354, Laws 1883). All personal property shall be assessed in the assessment district where the owner resides, except as hereinafter provided (a). If such owners be non-residents of the state, or foreign associations or corporations, but having an agent residing in this state in charge of such property, then the same shall be assessed in the district where such agent resides; otherwise in the district where the same is located, except as hereinafter provided. Merchants' goods, wares, commodities kept for sale, tools and machinery, manufacturers' stock, farm implements, cord-wood, live stock and farm products, excepting grain in warehouse; shall be assessed in the district where located. Saw-logs and timber which are to be sawed or manufactured in any mill within this state, which is owned or leased by the owner of such logs or timber, or in which such logs or timber are to be sawed or manufactured by, or for the owner thereof, shall be assessed as manufacturers' stock in the district where such mill is located. Saw-logs, timber, railroad ties, lumber and other articles not being manufacturers' stock, shall be assessed where the owner or agent having the same in charge in the case aforesaid resides (b). No change of location or sale of any personal property after the first day of May in any year shall affect the assessment made in such year. As between school-districts and road districts, the location of personal property for taxation shall be determined by the same rules as between assessment districts; provided, that whenever the owner or occupant shall reside upon any contiguous tracts or parcels of land which shall lie in two or more assessment districts, then the farm implements, live stock and farm

Personal property where assessed.

3 Pin. 267.
14 Wis. 366, 623.
20 Wis. 634.
42 Wis. 97.
53 Wis. 543.

Merchant's goods.

Logs and timber.

60 Wis. 453.

Change of location not to affect assessment, when.

(a) Mineral raised from land becomes and may be taxed as personal property. [3 Pin. 267.]

The act of voting in a place is the highest evidence that a person has made such place his residence. [*Kellogg v. The City of Oshkosh et al.*, 14 Wis. 623.]

For the purpose of taxation, a person must have a residence somewhere, and that residence must be deemed to continue until he has acquired another. It is not sufficient that he has abandoned his old home and removed his property therefrom with intent to make a new one elsewhere, so long as he has not actually acquired a new domicile. [*Kellogg v. The Supervisors of Winnebago County*, 42 Wis. 97.]

(b) Lumber kept in a lumber-yard for sale (like other "merchants' goods, wares and commodities kept for sale,") is to be assessed for taxation in the assessment district in which it is located. [*Mitchell v. Town of Plover*, 53 Wis. 543. *Washburn v. Oshkosh*, 60 Wis. 453.]

products of such owner or occupant used, kept or being upon such contiguous tracts or parcels of land, shall be assessed in the assessment district where such owner or occupant resides at the time of such assessment.

Assessment of
personal prop-
erty.

SECTION 1040a (ch. 258, Laws 1882). 1. All saw-logs, timber, railroad ties or telegraph poles cut in this state, owned by any person or corporation not residing in this state and having no agent in this state, shall be assessed in the assessment district where the same shall be banked or piled for shipment either by water or railroad.

Saw, logs, tim-
ber, etc.

2. It shall be the duty of the assessor of the assessment district in which saw-logs, timber, railroad ties or telegraph poles owned by non-residents as aforesaid may be located, to ascertain at any time during the month of April in each year, the amount of such property in his assessment district, by actual view, as far as practicable, to fix the value of said property and assess the same to the said owners as other personal property is valued and assessed.

Incorporated
companies.

SECTION 1041. The residence of an incorporated company, for the purposes of the preceding section, shall be held to be in the assessment district where the principal office or place of business of such company shall be.

Assessment of
bank stock.

53 Wis. 440.

SECTION 1042. All the stock of every bank or banking association, whether organized under authority of any law of this state, or of any act of the congress of the United States, and all the capital stock of every person, association, or other corporation whatever, engaged in the business of banking, buying and selling exchange, and receiving deposits, shall be assessed and taxed in the assessment district where such bank or banking association, or where such person, association or corporation is located for the transaction of business.

TO WHOM TO BE ASSESSED.

To whom real
property as-
sessed

20 Wis. 305.
23 Wis. 364.
25 Wis. 480.
28 Wis. 450.
37 Wis. 645.
42 Wis. 391.

SECTION 1043. Real property shall be entered in the name of the owner, if known to the assessor, otherwise to the occupant thereof, if ascertainable, and otherwise without any name. The person holding the contract or certificate of sale of any real property contracted to be sold by the

state, but not conveyed, shall be deemed the owner for such purpose. The undivided real estate of any deceased person may be entered to the heirs of such person without designating them by name. The real estate of an incorporated company shall be entered in the same manner as that of an individual. Real property held under lease from any religious, scientific, literary or benevolent association, but otherwise exempt, shall be assessed to the lessee.

SECTION 1044. Personal property which is liable to taxation, shall be assessed to the owner thereof, except in this section provided. The assessor shall place upon the assessment roll, opposite the name of each person liable to assessment on personal property as hereinafter provided, the valuation of all personal property owned by himself or wife, or which he has in charge or possession as lessee, occupant, agent, mortgagee, pledgee, parent, guardian, executor, administrator, trustee, assignee or receiver, which is liable to taxation. All the personal property of a partnership shall be entered in the partnership name, and each partner shall be liable for the whole tax. Bank stock shall be entered in the names of the holders of the several shares thereof respectively, and the capital stock of every person, association or corporation (other than banks) engaged in the business of banking, buying and selling exchange and receiving deposits, shall be entered in the names of the several owners thereof respectively.

To whom personal property assessed.

HOW TO BE ENTERED AND DESCRIBED ON THE ROLL.

SECTION 1045. The assessor shall enter upon the assessment roll opposite to the name of the person to whom assessed, if any, as before provided, in regular order as to lots and blocks, sections and parts of sections, except that so much as is within the limits of a village shall be assessed in one continuous part of the roll, from the best information he can obtain, a correct and pertinent description of each parcel of real property in the assessment district not exempt from taxation, and the number of acres in each tract containing more than one acre. When two or more lots or tracts owned by the same person are deemed by the assessor so improved

How real estate entered in assessment roll.

20 Wis. 305.
23 Wis. 364.
25 Wis. 490.
23 Wis. 456.
56 Wis. 289.

or occupied with buildings as to be practically incapable of separate valuation, they may be entered as one parcel. Whenever any tract, parcel or lot of land shall have been surveyed and platted, and a plat thereof recorded according to law, the assessor shall designate the several lots and subdivisions of such platted ground as they are fixed and designated by such plat.

Public lands
and land mort-
gaged to state
how assessed.

SECTION 1046. The secretary of state shall annually, before the first day of May, make and transmit to the county clerk of each county, an abstract containing a correct and full statement and description of all public lands sold and not patented by the state, and of all lands mortgaged to the state, lying in his county; and immediately on receipt thereof, the county clerk shall make and transmit to the clerk of each town or city in the county, a list from said abstract of such lands lying in such town or city, if any. Every assessor shall enter on the assessment roll, in a separate column, under distinct headings, a list of all such public and mortgaged lands, and the same shall be assessed and taxed in the same manner as other lands, without regard to any balance of purchase money or loans remaining unpaid on the same.

Lands, how
described in
rolls.

SECTION 1047. (As amended by chapter 268, Laws 1881.) In all assessments and tax rolls, and in all advertisements, certificates, papers, conveyances or proceedings for the assessment and collection of taxes, and proceedings founded thereon, as well heretofore as hereafter, any description of lands which shall indicate the land intended with ordinary and reasonable certainty, and which would be sufficient between grantor and grantee, in an ordinary conveyance, shall be sufficient; nor shall any description of land according to the United States survey, be deemed insufficient by reason of the omission of the word quarter, or the figures or signs representing it, in connection with the words or initial letters indicating any legal subdivision of lands, according to government survey. Where a more complete description may not be practicable, and a deed describing any piece of real property is recorded in the office of the register of deeds for the county, a description stating the volume and page where recorded, and the

section, village, or, if within a city, the ward, where the property is situated, shall be sufficient.

SECTION 1048. No assessment of real property, which has been or shall be made, shall be held invalid or irregular for the reason that several lots, tracts or parcels of land have been assessed and valued together as one parcel, and not separately, where the same are contiguous and owned by the same person at the time of such assessment.

Assessment not invalid, because lots assessed as one parcel, etc.

20 Wis. 305.
25 Wis. 490.

SECTION 1049. The assessor shall place in one distinct and continuous part of the assessment roll, all the names of persons assessed for personal property, with a statement of such property in each village, in his assessment district, and foot up the valuation thereof separately; otherwise he shall arrange all names of persons assessed for personal property on his roll alphabetically so far as he conveniently can. He shall also place upon the assessment roll, in a separate column, and opposite the name of each person assessed for personal property, the number of the school-district in which such personal property is subject to taxation.

How assessment of personal property entered.

SECTION 1050. Every assessor shall ascertain and set down in separate columns prepared for that purpose, on the assessment roll and opposite the names of all persons assessed for personal property, the number and value of the following named items of personal property assessed to such person, and which shall constitute the assessed valuation of the several items of property therein described, to wit:

Number and value of items of personal property — how entered.

1 Wis. 345.
20 Wis. 191.
23 Wis. 639.
24 Wis. 303.
25 Wis. 271.
10 Wis. 393.

1. The number and value of horses of all ages.
2. The number and value of neat cattle of all ages.
3. The number and value of mules and asses of all ages.
4. The number and value of sheep and lambs.
5. The number and value of swine.
6. The number and value of wagons, carriages and sleighs.
7. The number and value of gold and silver watches.
8. (As amended by Ch. 247, Laws 1881.) The number and value of pianos, organs and melodeons.

9. The value of merchants' and manufacturers' stock.

10. The value of all other personal property except such as is by law exempt from taxation.

11. The total value of all the personal property described as above.

ASSESSMENT OF BANK STOCK:

Bank stock;
how assessed.

18 Wis. 281.
23 Wis. 655.
25 Wis. 112.

Statement of,
to be furnished
assessor.

Oath of officer
making state-
ment.

SECTION 1051. Upon the demand of the assessor, the president, cashier or other officer in charge of any incorporated bank shall make out and deliver to such assessor annually before the first day of June, a statement showing the name and residence of each stockholder therein, on the first day of May preceding, and the amount of stock held by him on that day; the highest and lowest price at which any *bona fide* sales of said stock are known to have been made during the preceding year, and the full, true value of said stock, on said first day of May. The person making such statement shall, before delivering the same to the assessor, take and subscribe an oath to be administered and certified by the assessor and annexed to such statement, substantially in the following form, to wit:

STATE OF WISCONSIN, — County — ss.

I, ———, do solemnly swear that I am ——— of the (here name the bank); that the annexed is a true statement of the names of all the stockholders in said bank on the first day of May, 18—, and of the amount of stock then held by each of them, and of the highest and lowest *bona fide* sale of any of said stock during the preceding year, known to me; and that the value of said stock set down in said statement is the full true value thereof, such as I verily believe any stockholder desiring to sell would be willing to accept in full payment.

(Signed by affiant.) ———.

Subscribed and sworn to before me, this ——— day of ———, 18—.

— — — —, Assessor.

Statement by
officers of cor-
porations, not
banks.

Every person, and the president, cashier or managing agent or officer in charge of every association or corporation (other than such banks), engaged in the business of banking, buying and selling exchange and receiving deposits, shall on

like demand deliver to the assessor a statement showing the name and residence of every person owning any part of the capital stock of such person, association or corporation, so engaged, the prices of any sales of stock, and the true value thereof, in manner aforesaid, and take and subscribe and annex thereto a like oath, adapting the words thereof to such case. If any such person, officer, or agent shall refuse to make out and deliver such statement, when so required, he shall be personally liable to the town, city or village for the whole amount of taxes, which should be paid upon such stock; and it shall be the duty of the treasurer to sue him for the same in the name of said town, city or village.

Oath to be taken.

Penalty for refusal.

HOW TO BE VALUED.

SECTION 1052. Real property shall be valued by the assessor, either from actual view or from the best information that the assessor can practicably obtain, at the full value which could ordinarily be obtained therefor at private sale. In determining the value the assessor shall consider, as to each piece, its advantage or disadvantage of location, quality of soil, quantity of standing timber, water privileges, mines, minerals, quarries or other valuable deposits known to be available therein, and their value. Real property held under lease from any religious, scientific, literary or benevolent association, but otherwise exempt, shall be assessed to the lessee. The assessor, having fixed the value, shall enter the same opposite the proper tract or lot in the assessment roll (a).

Real estate:
how valued.

37 Wis. 75.
42 Wis. 502, 527.
43 Wis. 48, 55.
45 Wis. 519.
18 Wis. 350.

SECTION 1053. The county board of any county in this state may, in their discretion, in any year, appoint as many land inspectors as they shall

Land inspectors may be appointed.

(a) An assessment made upon the basis of about one third of the real value of the property, instead of "at the full value which could ordinarily be obtained therefor at private sale, and which the assessor believes the owner, if he desired to sell, would accept in full payment." (Sec. 16, Ch. 180, General Laws, 1968), is invalid, and collection of tax thereon will be restrained. [*Schettler v. The City of Fort Howard*, 43 Wis. 4-].

So in case of excessive valuation of property intentionally made for the purpose of compelling the owner to pay more than his just proportion of the taxes. [*The Milwaukee Iron Co. v. The Town of Hubbard*, 29 Wis. 51.]

The assessor valued the lands in a town at what he thought they would bring at a forced sale for cash, knowing that this was less than the market value. Such rule of valuation is unauthorized and vitiates the tax based upon it. [*Goff v. Supervisor of Outagamie Co.*, 43 Wis. 53]

To take and
file oath.

Their duties.

think necessary, to be chosen by ballot, and assign to each by resolution any district of territory in the county for examination, and prescribe the time in which it shall be made. Each such inspector shall take and subscribe an oath of office, and file it with the county clerk. He shall then proceed to personally examine each and every forty-acre tract or other legal subdivision of a section of entered land in such district, and make a list and description thereof substantially in the following form:

DESCRIP- TION.	Section.	Town.	Range.	Timber.	Soil.	Timber cut off.	Amount of timber.	Distance from.	Remarks.
N. E. N. E.				Pine or hard wood, as the case may be.	Sandy or good soil swamp, as the case may be.	Cut off or partly cut, as the case may be.	100,000 ft. board measure, as the case may be.	Logging stream, 1, 2 or 3 miles, as the case may be.	Burnt over or windfall.
Lot No....									

List published;
copies sent to
assessors.

Duty of assess-
ors, on re-
ceiving lists.

He shall attach to such list when completed, his affidavit that he has personally examined, since his appointment as land inspector, in such year, each tract of land in the annexed list, and that the description set opposite each tract therein is substantially a true description of the same to the best of his knowledge and belief, and shall file the same with the county clerk, and thereupon his duties as land inspector shall cease. The county clerk shall immediately cause so many copies of such list to be printed as the county board may have directed, and the same to be published in a newspaper, if so directed, and shall, on or before the next first day of June, send one or more printed and certified copies of such list to each assessor and town clerk in the county. The county board may prescribe the compensation of each such inspector.

SECTION 1054. Every assessor in the counties named in the preceding section, receiving any such list, may fix the value on his assessment roll

of any land described therein, *except improved lands*, with the aid of such list last filed, and others theretofore filed, upon the principles prescribed in section one thousand and fifty-two, without making a personal examination thereof; and if any person owning any tract of land shall file with the assessor affidavits showing that the timber has been cut therefrom, and thereby the land rendered of little value, the assessor may, if satisfied of the truth thereof, take such fact into consideration. Every assessor shall deliver to his successor all such affidavits and such certified lists received from the county clerk.

SECTION 1055. All articles of personal property shall, as far as practicable, be valued by the assessor upon actual view, at their true cash value; and after arriving at the total valuation of all articles of personal property which he shall be able to discover as belonging to any person, if he have reason to believe that such person has other personal property, consisting of money, credits, debts due or to become due, or any other thing of value liable to taxation, he shall add to such aggregate valuation of personal property an amount which, in his judgment, will render such aggregate valuation a just and equitable valuation of all the personal property liable to taxation belonging to such person.

Personal property, how valued.

SECTION 1056. To determine the amount and value of personal property for which any person should be assessed, other than money, notes, bonds, mortgages or other securities, any assessor may examine such person, under oath, as to all such items of property, and the true value thereof; and should any person refuse to so testify, or should any assessor, or the board of review, hereinafter provided for, desire further evidence, they may call upon other persons as witnesses, to give evidence under oath, as to the items and value of the personal property of such person. To determine the amount of money, notes, bonds, mortgages or other securities for which any person should be assessed, and the amount of indebtedness which any person may be entitled to deduct from credits as exempt, such person shall be required to make a statement thereof, under oath, giving the average amount of such money, notes, bonds, mortgages or other securities, owned

Assessors, etc., may examine taxpayer, etc.

1 Wis. 845.
57 Wis. 143.

or held by him and the average amount of indebtedness which he may be so entitled to deduct for each and every month during the year ending on the first day of May, and the average amount for such year, so determined, shall be assessed for taxation.

Assessor to
value bank or
capital stock.

53 Wis. 440.

SECTION 1057. The assessor may value bank stock or capital stock according to his best judgment, if in his opinion the same shall have been fixed too low, in the statement of the bank officer, person or agent, furnished according to section one thousand and fifty-one; or if such statement shall be refused on his demand therefor (a).

FORMER ERRORS TO BE CORRECTED.

Assessors to
correct errors
in roll.

SECTION 1058. If any assessor shall discover that any error was made in copying any assessment roll during the preceding year, by which the valuation of any real or personal estate, subject to taxation, was increased or reduced from the true assessed valuation thereof, he shall correct such error by adding to or subtracting from (as the case may be) the valuation of such property on his assessment roll, as fixed by him, the amount omitted from or added to the true assessed valuation in consequence of such error, and make a marginal note of such correction, and the result shall be taken as the true valuation of such property for the latter year, and a final correction of such error.

Assessors to in-
clude lands
previously
omitted.

SECTION 1059. Real property omitted from assessment in any of the three next previous years, by mistake or inadvertence, unless previously reassessed for the same year or years, shall be entered once additionally for each previous year of such omission, designating each such additional entry as omitted for the year 18— (giving year of omission), and affixing a just valuation to each entry for a former year, as the same should then have been assessed, according to his best judgment, and taxes shall be apportioned and collected on the tax roll for such entry.

(a) The owner of stock in a National bank may deduct the amount of his bona fide indebtedness in the valuation of said stock for taxation. [Ruggles v. Fond du Lac, 53 Wis. 436.]

BOARD OF REVIEW.

SECTION 1060. (As amended by chapter 74, Laws 1881.) The supervisors, clerk and assessors of each town, the mayor, clerk and assessors of each city, the president, clerk and assessors of each village, in which taxes are assessed and collected independently of the town, shall constitute a board of review of such town, city or village. The board of review shall meet annually, on the last Monday of June, at its town, city or village clerk's office. A majority shall constitute a quorum. Notice (1) of the time and place of meeting shall be posted up by such clerk in at least three public places in each town, village or city, or ward thereof, at least four days prior to such meeting. The town, city or village clerk on such board of review shall be clerk thereof, and shall keep an accurate record of all its proceedings. The board may adjourn from day to day, or from time to time, until its business is completed, provided, however, that if an adjournment be had for more than one day, a written notice thereof shall be posted on the outer door of said clerk's office, stating to what time said meeting is adjourned, and such board shall receive the same compensation as is allowed by law to assessors, provided, that the provisions of this act shall not be so construed as to alter, repeal, amend or modify the provisions of any city charter relating to the cases herein provided for.

Board of re-
view, proceed-
ings of.

18 Wis. 257.
20 Wis. 191.
22 Wis. 639.
24 Wis. 303.
25 Wis. 271, 594.
26 Wis. 383.
29 Wis. 444.
56 Wis. 660.

SECTION 1061. The assessors shall lay before the board of review their assessment roll of the real property, and all the sworn statements made by others, and valuations made by them of per-

Duties of board
of review.

56 Wis. 665.
57 Wis. 5.

(1) *Form of Notice of Meeting of Town Board of Review.*

Town of ———, ss.

Public notice is hereby given that the board of review for said town of ——— will meet at the office of the undersigned, town clerk thereof, on the ——— day of ———, 18— (last Monday of June), at ——— o'clock in the (fore) noon, for the purpose of reviewing and examining the assessment roll of real and personal property in said town, and all sworn statements and valuations of real and personal property therein, and of bank-stock, and of correcting all errors in said roll, whether in description of property or otherwise.

Dated this ——— day of ———, 18—.

———, Town Clerk.

May examine
persons.

May increase
or diminish as-
sessments.

May determine
valuation of
bank stock.

Persons ag-
grieved to be
heard.

Board may
lower or raise
valuation.

Not to raise
without notice
to owner.

sonal property or bank-stock. The board shall, under their official oaths, carefully review and examine said roll and statement, and all valuations of real and personal property and bank-stock, and shall correct any errors in description of property or otherwise; and for that purpose they are hereby required to hear and examine any person or persons upon oath, who shall appear before them, in relation to the assessment of any property upon said roll, or in relation to any property omitted therein; and if it appear that any property has been valued by the assessor too high or too low, they shall increase or lessen the same, to the true valuation according to the rules for valuing property prescribed in this chapter. They shall determine the correct value of any bank-stock, which has been valued in his statement thereof by an officer of the bank at one price and by the assessor at a different price. Any person who thinks the aggregate valuation of his personal property by the assessor too high, may appear and state to the board under oath the true aggregate valuation of all personal property upon which he is liable to taxation, and if the board shall be satisfied of the truth of such statement, they shall take the valuation so fixed by him as the true aggregate valuation of his personal property. The board of review shall, when satisfied from the evidence taken that the assessor's valuation is too high or too low, lower or raise the same accordingly, whether the person assessed appear before them or not. The board may also place upon the roll any property they may know to be omitted, and assess the same to the person to whom in right it should be assessed. But they shall not raise any assessment nor assess any property not already on the roll, unless the person assessed, if a resident of the town, city or village, or if a non-resident, his agent, if there be one resident therein, or if neither the possessor of the property assessed, if any, shall have been duly notified (1) of such intention, in time to appear and be heard

(1) *Form of Notice of Raising Valuation.*

Town of ———, ss.

SIR: It appearing to the board of review for said town from the evidence before them, that certain real (or personal) property therein, to wit: (*describe the same*), for which you

before the board in relation thereto; *provided*, the residence of such owner, agent or possessor be known to any member of said board. Any person claiming any correction of the assessment may call witnesses to support the same; or to show that any property on the roll is assessed too high or too low; and the attendance of witnesses may be compelled by subpoena issued by a justice of the peace. The clerk shall keep a careful record of all changes made and valuations determined on by the board, and shall reduce to writing and preserve the examination and statements of every person and witness taken by the board (a.)

Clerk to keep record.

CORRECTION AND RETURN OF ROLL.

SECTION 1062. The assessor shall make all corrections to the assessment roll ordered by the board of review; and when any valuation of real property shall be changed, he shall enter on the roll opposite the proper tract in a separate column, the valuation fixed by the board. He shall also enter upon the assessment roll in the proper place, the names of all persons found liable to taxation on personal property, or bank-stock, setting opposite such names respectively the aggregate valuation of such property, after deducting exemptions and making such corrections as the board may have ordered.

Correction and return of roll.

SECTION 1063. The assessor or assessors shall annex to the assessment roll, when completed, his or their affidavits, to be made and certified substantially in the following form, viz.:

Affidavit of assessor to roll.

are liable to assessment, has been valued by the assessor too low (or has been omitted from the assessment roll) for the year 18—, you are hereby notified that the said board of review will be in attendance at the office of the town clerk of said town, on the — day of —, 18—, at — o'clock in the — noon, at which time and place they intend to raise the valuation of said (or, to place upon the said roll and assess such omitted) property, at which time and place you may be heard before the board in relation thereto, if you desire.

Dated this — day of —, 18—.

— —, Clerk of Board of Review.

To A — B —.

(a) The "official oaths" of the statute are the general oaths of office, which it must be presumed the members of the board have taken as town officers. [*McIntyre v. The Town of White Creek et al.* 43 Wis. 620.]

The duties imposed upon the board of review by sections 1060, 1061, are

47 Wis. 240.
58 Wis. 540.
60 Wis. 521.

STATE OF WISCONSIN, — County, — ss.

We — — and — —, assessors for the — of —, in said county, do solemnly swear that the annexed assessment roll contains, as we verily believe, a complete and perfect entry and list of all real property liable to assessment for the present year, in said —, the name of each person therein owning or having in charge personal property liable to taxation; the name of each stockholder and the amount of his stock in each incorporated bank in said town or ward, a correct description of the separate parcels of real property assessed; that we have, as far as practicable, valued each parcel of real estate from an actual view of such parcel (but in towns exceeding one hundred and eight square miles, this clause shall be, "that we have valued each parcel of real estate from actual view, or from the best information we could practicably obtain, and all improved lands from actual view"); that we have, as far as practicable, personally viewed and inspected each article of personal property assessed by us; that the valuation of the real property as set down in said roll is as determined by us, or as corrected by the board of review; that the valuation of personal property and bank-stock in said roll is as fixed by us, or as finally fixed by the board of review; that each and every valuation of the property made by us is the just and equitable value thereof, as we verily believe.

Read to the affiant, and subscribed and sworn to before me this — day of —, 18—.

46 Wis. 163.
48 Wis. 558.

No assessor shall be allowed any court or place, by his oath or testimony, to contradict or impeach any affidavit or certificate made or signed by him as such assessor.

Assessor to deliver roll, etc., to town, city or village clerk.

55 Wis. 119.

SECTION 1064. The assessor shall, on or before the first Monday in August, annually deliver the assessment roll so completed, and all the sworn statements and valuations of personal property, to the clerk of the town, city or village, who shall file and preserve the same in his office.

SECTION 1065. Upon receiving such assessment

judicial in their nature, as opposed to mere ministerial acts. The board has to hear testimony; to ascertain facts; to correct errors, and arrive at results, according very much to the proceedings and processes of courts in the determination of causes. (*Steele v. Dunham et. al* 26 Wis. 393.)

roll, the said clerk shall carefully examine it. He shall correct all double assessments, imperfect descriptions, and other errors, apparent upon the face of the roll, and strike off all parcels of real property not liable to taxation. He shall add to the roll any parcel of real property omitted by the assessors, and immediately notify them thereof; and such assessors shall forthwith view and value the same and certify such valuation to said clerk, who shall enter it upon the roll, and such valuation shall be final. To enable such clerk to properly correct such defective descriptions, he may call to his aid, when necessary, the county surveyor, whose fees for the services rendered shall be paid by the town.

Clerks to examine and correct rolls.

SECTION 1066. Upon the correction and completion of the assessment roll, as provided in the preceding section, the said clerks shall ascertain, and, on or before the fourth Monday in August, transmit to the county clerk a detailed statement of the aggregate of each of the several items, specified in section one thousand and fifty, and the valuation of bank-stock, with a statement of the number of acres of land and the aggregate value thereof, and aggregate value of all city and village lots as appears from the assessment roll.

When statements to be sent to county clerk.

SECTION 1067. Each county clerk, immediately upon the receipt of such statements, shall make an abstract of the same, and transmit it to the secretary of state, on or before the second Monday in September.

County clerks to transmit abstracts to secretary of state.

SECTION 1068. Whenever any town, city or village clerk shall have failed to transmit any such statement, within the time fixed as aforesaid, the county clerk shall send a messenger therefor, who shall be paid and the expenses charged back as provided in section one thousand and fifteen, and whenever any county clerk shall have failed to transmit any such abstract within the time fixed as aforesaid, the secretary of state may send a messenger therefor, who shall be paid and the expenses therefor charged back as provided in section one thousand and sixteen (a).

County clerk to send messenger for statements.

* * * * *

(a) Sections 1019 to 1072, both inclusive, relating entirely to the apportionment of state taxes, are omitted.

COUNTY APPORTIONMENT.

County apportionment.

SECTION 1073. The county clerk of each county shall annually, before the second Tuesday of November, prepare a statement of the latest statistics of population, and such other statistical information as he may have, and lay the same, together with the statements received during the year from the several town, city and village clerks, in pursuance of section one thousand and sixty-six, before the county board at their annual meeting in November. The county board shall, at such meeting, carefully examine all such statements, and determine and assess the relative value of all the taxable property in each town, city and village which, by its charter, collects taxes independently in their county. They shall set down in a list of the towns, cities and such villages, opposite the name of each, the value thereof so determined by them, which shall be the full value, according to their best judgment. The list so prepared shall be certified to by the chairman and clerk of said board, as the county assessment made by said board, and said clerk shall file the same in his office, and record it in a book therefor.

County board to assess relative values, etc.

8 Wis. 188.
11 Wis. 1.
42 Wis. 508.
52 Wis. 629.
59 Wis. 15.

Lists to be certified and filed.

County board to levy county tax.

SECTION 1074. The county board shall also, at said meeting, determine by resolution the amount of tax to be levied in their county for county purposes for the year, and also the amount to be raised by tax in each town for the support of common schools therein for the ensuing year, which shall not in any town be less than the amount apportioned to such town in the last apportionment of the income of the school fund; and by a separate resolution, adopted by a majority of the members of the board not prohibited from voting thereon by section seven hundred and three, determine the amount of tax to be levied to pay the compensation and allowances of the county superintendents of schools, and designate therein the cities exempt from taxation therefor.

County may apportion tax previously omitted.

SECTION 1075. Whenever the county board of any county shall fail to apportion against any town, city or village thereof in any year, any state, county or school tax, or any part thereof, properly chargeable thereto, such county board shall in any succeeding year apportion such taxes

against such town, city or village, and add the proper amount thereof to the amount of the current annual tax then apportioned thereto.

SECTION 1076. The county clerk shall apportion the county tax and the whole amount of state taxes and charges levied upon his county, as certified by the secretary of state, among the several towns, cities and such villages as aforesaid therein, according and in proportion to the relative valuation thereof to the aggregate valuation of the whole county; and shall carry out in the record book aforesaid, opposite to the name of each in separate columns, the amount of state taxes and charges, and the amount of county tax so apportioned thereto, and also the amount to be raised as aforesaid for the support of common schools therein, and the amount of all other special taxes or charges, apportioned or ordered, or which he is required by any law to make in any year to any such town, city or village, to be collected with such annual taxes; and within ten days after the assessment of values by the county board, he shall certify to the clerk of, and charge to, each town, city and such village, the amount of each and all such taxes so apportioned to and levied upon the same.

County clerk to apportion taxes among towns, etc.

SECTION 1077. Each county clerk shall also at the time of certifying such taxes, return to the clerk of each town, city and such village, a list of all the tracts of land therein, upon which the taxes for the preceding year remain unpaid.

County clerk to certify unpaid taxes to town clerks.

SECTION 1077a. (Ch. 291, Laws 1880, as amended by Sec. 1, Ch. 212, Laws 1882.) 1. The mayor and common council of any city, the president and board of trustees of any village, or the supervisors of any town, who may consider such city, village or town aggrieved by the action or decision as to either real or personal property, or both, which may have been heretofore or shall hereafter be made or taken under section 1073, of the revised statutes, or other provisions of law for the county apportionment or equalization of assessments by the board of supervisors of the county wherein such city, village or town is located, may apply at any time within one year from the time when such action or decision may have been or shall be made or taken to the circuit judge of the judicial circuit wherein such county

Application for appointment of same.

is situated, for the appointment of three commissioners to review such action or decisions and to examine and determine what sum upon the hundred dollars should be added to or deducted from the aggregate valuations of real or personal property, or both, as the case may be, as therein made by such county board of supervisors, in order to produce a just relation between all the valuations of real or personal property, or both, in said county, according as such city, village or town may be aggrieved as to real or personal property, or both; but such commissioners shall in no case increase the aggregate valuation throughout the county of such property, real or personal, or both, as they are, under such application, to inquire into, above the aggregate valuation of the same property made by said county board of supervisors.

2. Notice of such application shall be given to the board of supervisors of said county by service of such notice upon its county clerk at least two weeks immediately previous to the time when such application shall be made; the county clerk shall thereupon send by mail, or serve personally upon each member of the county board of supervisors, a copy of such notice.

Duty of circuit
judge.

3. Upon due proof of the service of such notice upon the county clerk as aforesaid, and upon the presentation of a petition, briefly stating the facts, the said judge shall appoint three discreet freeholders, not residents or owners of real estate in said county, who shall proceed to review and examine, as specified in the first section of this act, and shall within three months after receiving notice of their appointment, make the determination therein requested, and file a certificate of the same under their hands, in the office of the county clerk of said county. The valuation so determined shall be final and conclusive; and in the assessment and collection of taxes for the next following year, each town, village or city in said county shall be credited with an amount equal to the amount that it has or shall have been charged with on any excess of valuation as determined by said commissioners, and each town, village or city that has or shall have been charged with a less amount of taxes on account of such undervaluation, shall be charged in addition to all

Duty of com-
missioners.

other taxes with an amount equal to such deficiency, which amount shall be carried out and collected as other taxes.

4. The said commissioners, before proceeding to the discharge of their duties, shall severally take and subscribe an oath or affirmation, faithfully and impartially to discharge their duties under this act; they shall be entitled to receive four dollars each for every day in which they shall be actually employed in the discharge of their said duties, in addition to their actual expenses; the same with all other expenses connected with the making of the application and the subsequent proceedings, to be audited and allowed as a county charge by the county board of supervisors, and to be paid in the same manner as other county charges are paid; if, however, the decision of the commissioners is adverse to the city, town or village making the appeal, such city, town, or village shall reimburse the county for all expenses so paid.

Oath and compensation of commissioners.

5. This act shall apply to the action or decision of any county board made or taken during the year 1879, as well as to future actions or decisions, and shall take effect and be in force from and after its passage and publication.

Application of these provisions.

SECTION 1077b. (Sec. 2, ch. 212, Laws 1882.) Before the final determination by the commissioners appointed under said chapter 291, upon the valuation which they are to examine and review, they shall appoint a convenient time and place in such county for hearing any evidence or arguments upon the valuations under review to be offered by any taxpayer or officer of any city, village or town in the county, and shall give notice thereof by mail at least ten days before such time to the clerk of each city, village or town in the county. The commissioners shall attend at the time and place named, or at a time and place to which they may adjourn, and they shall hear any evidence or arguments from or on behalf of any taxpayer or officer, and shall sit at least five days. They may adjourn from day to day and from time to time, call for and examine any assessment, or taxpayers or records in the county, subpoena and swear witnesses, and in general conduct the hearing after the usual manner of a judicial hearing; but they shall hear evidence.

Commissioner to appoint time to hear arguments of taxpayers.

and arguments and consider the facts as to the valuation of the property of specific taxpayers only so far as in their judgment such valuation bears on the just aggregate valuation of any city, village or town.

THE TAX ROLL.

Tax roll, how made.

SECTION 1078. From the assessment roll when so corrected, the town clerk (and the clerk of each city or such village as aforesaid, when a different course is not directed by its charter) shall make out in a book to be called a tax roll, a complete list of all the taxable real property therein, arranged, except as herein directed, in regular order as to lots and blocks and sections and parts of sections by the proper corrected descriptions; and having entered opposite, in separate columns, the name of the person to whom assessed before, and the valuation thereof ascertained as aforesaid after such description; and also a complete alphabetical list of all persons in his town having any taxable personal property, with the aggregate valuation of such property ascertained as aforesaid, and the number of the school-district in which it is subject to taxation, set opposite in separate columns.

Village property, how entered in roll.

Whenever village property is embraced in a town tax roll, the list of the real property and of persons taxable for personal property as aforesaid shall be entered in a continuous part of the roll, and the valuations be separately footed. Public lands sold and not patented, and lands mortgaged to the state, shall be separately entered under a proper heading.

Public lands and lands mortgaged to state, how entered.

Town clerks to calculate and carry out tax in roll.

SECTION 1079. (As amended by Ch. 59, L. 1883.) Upon receipt of the certificate of the apportionment from the county clerk, said town clerk shall, upon a uniform percentage, calculate and carry out in one item opposite to each valuation in said tax roll, the amount required to be raised upon such valuation to realize in his town the whole amount of state, county, school and other taxes so certified, together with such town and other local taxes, except taxes to pay judgments, as are to be levied uniformly upon all the taxable property in the town; and all other taxes, if any, including taxes to pay judgments, in separate columns opposite the valuation of the property to be charged.

In an additional column he shall enter opposite each valuation five per centum upon the sum of all the taxes charged thereto, as a collection fee. Under the head of "taxes unpaid for previous year," he shall enter opposite each tract of land so returned to him as aforesaid by the county clerk, the year for which such tax remains unpaid. He shall enter upon said roll, a statement showing the several amounts of taxes levied upon said town or any part thereof, and for what purpose; provided, in case the board of supervisors of any county shall so order, said town clerk shall calculate and carry out in separate items the several amounts of taxes as are to be levied uniformly upon all the taxable property of the town, in separate columns on such roll, the form of which may be prescribed by such county board.

SECTION 1080. The treasurer of each town, city or village shall execute and deliver to the county treasurer a bond (1), with sureties to be approved, Treasurer to give bond.
47 Wis. 233.

(1) *Form of Town Treasurers' Bond Under Section 1080.*

Know all men by these presents, that we, A. B., as principal, and C. D. and E. F., as sureties, all of ———, are held and firmly bound unto the county treasurer of ——— county, in the state of Wisconsin, in the penal sum of (*double amount of state and county taxes apportioned to town*), to which payment, well and truly to be made to said county treasurer or his successor in office, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this ——— day of ———, A. D., 18—.

The condition hereof is such that if the above bounden A. B., who is town treasurer of the town of ———, in said county, shall faithfully perform the duties of his office of treasurer, and shall fully account for and pay over according to law all state and county taxes which shall come into his hands, then this obligation shall be void; otherwise to remain in full force and effect.

Sealed and delivered in the presence of: }

———,
———,

———, [SEAL]
———, [SEAL]
———, [SEAL]

Form of Approval.

I hereby approve the within bond, both as to the form thereof and the sufficiency of the sureties.

Dated this ——— day of ———, 18—.

———,
Chairman of the Town of ———.

in case of a town treasurer, by the chairman of the town, and in case of a city or village treasurer, by the county treasurer, in the sum of double the amount of state and county taxes apportioned to his town, city or village, conditioned for the faithful performance of the duties of his office, and that he will account for and pay over according to law, all state and county taxes which shall come into his hands. The county treasurer shall give to said town, city or village treasurer, a receipt for said bond, and file and safely keep said bond in his office.

And deliver receipt for bond to clerk.

47 Wis. 216.
58 Wis. 541.

SECTION 1081. (As amended by sec. 1, ch. 269, Laws 1881). Every such treasurer shall deliver said receipt to the clerk of his town on or before the first day of December, and thereupon the clerk shall attach to said tax roll a warrant, substantially in the following form:

Form of warrant.

The state of Wisconsin to ———, treasurer of the town of ———, in the county of ———: You are hereby commanded to collect, from each of the persons and corporations named in the annexed tax roll, and from the owners or occupants named of the real estate prescribed therein, the taxes set down in such roll opposite to their respective names, and to the several parcels of land therein described; and in case any person or corporation upon whom any such sum or tax is imposed, shall refuse or neglect to pay the same, you are to levy and collect the same by distress and sale of the goods and chattels of the person or corporation so taxed, and out of the moneys so to be collected, after deducting your fees, you are first to pay to the treasurer of said county on or before the last Monday in January next, the sum of ——— for state taxes; you are to retain and pay out as town treasurer, according to law, the sum of ———, and the balance of said moneys you are required to pay to said treasurer for

NOTE.—A warrant for the collection of taxes is not such process as is contemplated by section 17, article 7, of the constitution, which requires that the style of all writs and process shall be "The State of Wisconsin." A regular warrant issued by competent authority, affords the same protection to the collector while acting in obedience thereto, as is afforded by fair and regular process issued from a court of competent jurisdiction to ministerial officers. Where such warrant is irregular on its face, or not in compliance with the statute prescribing it, the officer is not protected by it. [*Sprague v. Birchard*, 1 Wis. 457.] Where the warrant is directed to the officer as an individual, and not as town treasurer, and requires him to pay over the state and county taxes and retain the residue for town and school purposes, thus reversing the order of payment required by statute, it is irregular and will afford no protection to the treasurer in executing it. [*Id.*]

county purposes, on or before the day above specified, by which day you are further required to make return to said treasurer of this warrant, with said roll annexed, together with your doings thereon, as required by law.

Given under my hand, this _____ day of _____, 18—, _____, Town Clerk.

The clerk shall deliver the tax roll, with said warrant annexed, to the town treasurer, if he shall have duly qualified as such, on or before the second Monday in December, and charge him with the town and local taxes therein.

SECTION 1082. If the tax roll shall have been delivered to the town treasurer before qualification, it shall be recalled from him and delivered to a town treasurer appointed and qualified according to law; if it cannot be obtained, the clerk shall make a new one, in the same manner, directed to the town treasurer so appointed and qualified, upon which he shall collect only the balance of taxes then remaining unpaid, and shall demand and sue for such as were collected upon the original roll from the person so collecting the same.

Roll to be recalled if delivered to town treasurer before he qualifies.

SECTION 1083. If the town treasurer elect shall fail to qualify as such, or to file his bond with the county treasurer in the manner and within the time prescribed, and the town board shall fail to appoint a town treasurer, or the person so appointed shall so fail to qualify and give such bond and deliver a receipt therefor by the second Monday in December, the town clerk shall deliver the tax roll and warrant to the sheriff of the county; or if the same cannot be obtained in the case mentioned in the last preceding section, a new roll and warrant, made as aforesaid; and the sheriff shall execute to the county treasurer a like bond as required of the town treasurer, and by himself or deputy shall make like collections and returns, and shall be entitled to the same compensation, and be responsible to the same extent as town treasurers appointed by town boards, on all taxes so handed over to him for collection; and for the purpose of collecting the same he shall be vested with all the powers conferred upon the town treasurer.

Tax roll, etc., delivered to sheriff, if no treasurer qualifies, etc.

SECTION 1084. Whenever any town, city or village clerk shall neglect or refuse to make and de-

Duty of county clerk when town, etc., clerks neglect to make and deliver roll and warrant.

liver the tax roll and warrant within the time required by law, the county clerk shall, at any time after such neglect or refusal, demand and summarily obtain the assessment roll for such year, and make, in the same manner as required of the town clerk, a tax roll for such town, city or village, and the like warrant thereto, and deliver the same to the sheriff of the county for collection, who shall give a like bond and have the power and proceed as directed in the next preceding section, in the case there provided, to execute such warrant. If the assessment roll cannot be obtained, the county clerk may use a copy thereof, if obtainable. If he can obtain neither original nor copy, he shall make out, to the best of his ability, a tax roll from the last assessment or tax roll on file in his office, or in the office of the county treasurer, which shall then be taken and deemed conclusively the legal tax roll of such town for all purposes whatever. For all such services, the county clerk shall be allowed by the county board, and paid from the county treasury, a reasonable compensation, which shall be charged to the town in the next apportionment of taxes.

Corrections of erroneous descriptions in roll.

SECTION 1085. Whenever it shall be discovered by any town, village or city clerk, or treasurer, that any parcel of land has been erroneously described on the tax roll, he shall correct such description, and when he shall discover that two or more parcels of land belonging to different individuals or corporations have been erroneously assessed together on his tax roll, he shall notify the assessor and all parties interested, if residents of the county, by notice in writing (1) to appear

(1) *Form of Notice to Correct Assessment.*

Whereas, the following described parcels of land situate in the town of ———, viz: Lot 1, in section ———, township No. ———, of range No. ———, belonging to E. F.; and lot 2, in said section, belonging to C. D., have been erroneously assessed together on the tax roll of said town for the year 18—: You are hereby notified to appear at the office of the undersigned, clerk of said town of ———, on the ——— day of ———, 18—, at ——— o'clock in the ——— noon, to correct the said assessment roll.

Dated this ——— day of ———, 18—.

—————, *Town Clerk (or) Town Treasurer.*
To E. F. and C. D., and to G. H., *Assessor.*

at the clerk's office at some time, not less than five days thereafter, to correct the assessment roll; at which time and place the assessment roll shall be corrected by entering the names of the persons liable to assessment thereon, describing each parcel and giving its proper valuation to each parcel separately owned; but the valuation so given to separate tracts shall not together exceed nor be less than the valuation given to the same property when the several parcels were assessed together. Such valuation, when so made, shall be held just and correct, and be final and conclusive.

Correction in assessment together of parcels of different owners.

SECTION 1086. When the assessment roll shall have been so corrected, the clerk shall enter a marginal note on the roll, stating when the correction was made by the assessor; and if the taxes shall have been extended against the property previously, the clerk shall correct the tax roll in the same manner that the assessment roll was corrected, and extend against each tract the proper amount of tax to be collected.

Correction of roll.

RE-ASSESSMENT OF TAXES.

SECTION 1087. (As amended by ch. 255, L. 1879.) Whenever any tax or assessment, or any part thereof, levied on real estate, whether heretofore or hereafter levied, shall have been set aside or determined to be illegal or void, or the collection thereof prevented by the judgment of a court or the action of the county board; or whenever any town, city or village treasurer shall have been prevented by injunction from collecting or returning as delinquent any such tax or assessment in consequence of any irregularity or error in any of the proceedings in the assessment of such real estate, the levy of such tax or the proceedings for its collection, or of any erroneous or imperfect description of such real estate, or of any omission to comply with any form or step required by law, or of the affixing of a revenue stamp to the tax certificate, and including the amount thereof in the same, or the including of any illegal addition with the lawful tax, or for any other cause; then, if the real estate was properly taxable or assessable, if it be not a proper case to collect by a resale of the land, such tax, or so much thereof as shall not have been collected

Taxes, when and how reassessed.

17 Wis. 71.
19 Wis. 509.
22 Wis. 602.
23 Wis. 99, 590.
25 Wis. 490.
27 Wis. 522.
29 Wis. 400.
29 Wis. 560.
30 Wis. 176.
43 Wis. 613.
56 Wis. 488.
66 Wis. 522.

Re-assessment
of school-dis-
trict taxes,
when made.

and as may be taxable or assessable thereto, may be re-assessed or releived upon such real estate at any time within three years after such judgment or such action of the county board, or the dissolution of such injunction; and the proper town board, village board, board of trustees, or common council, shall make an order directing the same to be reassessed upon such real estate; and the clerk shall insert the same in the tax roll, opposite such real estate, in a separate column, as an additional tax; and the same shall be collected as a part of the tax for the year, when so placed on the roll (a). Any such school-district tax shall be so re-assessed and releived on the order of the town board; but the provisions of this section shall not be construed as conflicting with, limiting or in any way affecting the re-assessment provided for in sections one thousand two hundred and ten b, and one thousand two hundred and ten c, of these statutes (1).

(a) Cases may arise that ought to be held not within the provisions of the statute; as a tax to aid an individual or association to build a mill or hotel. The legislature has no power to authorize such tax in the first instance, and it cannot be cured by a statute for its re-assessment. [*Dill v. Roberts*, 30 Wis., 178.]

(1) *Form of Order under Section 1087.*

COUNTY OF _____, }
Town of _____, } ss.

Whereas, the tax (or, assessment) (or, a part of the tax, or, assessment, to wit, *designate the part*) for the year 18—, upon the real estate hereinafter described has been set aside or determined to be illegal or void; (or, Whereas, the collection of the tax, or, assessment, or, the collection of a part of the tax, or, assessment, to wit: (*designating it*) for the year 18—, upon the property hereinafter described, has been prevented) by the judgment of the circuit court for the county of _____, entered on the _____ day of _____, 18—; (or, by the action of the county board of supervisors of the county of _____, taken on the _____ day of _____, 18—.)

[Or, Whereas, the town treasurer of the town of _____, in the county of _____, has been prevented by injunction from collecting, or, returning as delinquent, the taxes, or, assessment (or part thereof, as the case may be, *designating it*), upon the property hereinafter described, for the year 18—, in consequence of irregularity or error in (or, in certain of) the proceedings in the assessment of such real estate, or, in the levy of such tax, or, the proceedings for its collection (or otherwise specifying the ground, as in section 1087, or from any other cause, *assigning it*), the said injunction having been dissolved on the _____ day of _____ 18—.]

And whereas, the said real estate was properly taxable (or, assessable), and there remains uncollected of the tax (or, assessment), so as aforesaid set aside (or, determined to be illegal or void, or, the collection whereof was prevented by the judg-

OF THE COLLECTION OF TAXES.

(Chapter XLIX, R. S. 1878.)

SECTION 1088. All taxes levied upon any tract or parcel of land, and all costs, charges and interest thereon, shall be a lien thereon until paid, except as otherwise provided by law; and all costs and expenses which shall accrue jointly or in the aggregate, on two or more tracts or parcels, shall be apportioned in equal parts upon such several tracts or parcels; and all taxes levied upon any lands not owned by any person residing in the town in which the same are situated, and all costs, charges and interest thereon, shall also be a lien upon all logs, wood and timber cut upon such lands subsequent to the levy of such taxes; and it shall be the duty of the town treasurer, or if such taxes be returned uncollected, of the county treasurer, to pursue and levy upon such logs, wood or timber, wherever the same may be, and collect such tax by distress and sale of the same, in the manner provided by law for the distress and sale of personal property for the payment of taxes.

Taxes, a lien until paid.

56 Wis. 73.

Costs, etc., on parcels, how apportioned.

Taxes, a lien on logs, wood, etc., cut from land of non-residents after levy

SECTION 1089. (As amended by sec. 2, ch. 269, Laws 1881.) The town treasurer of each town, on the receipt of the tax roll for the current year, shall forthwith post notices (1) in three or more

Town treasurer to post notices for payment of taxes.

46 Wis. 328.

ment of said court, or, by the action of the county board, or, by injunction, as aforesaid, *as the case may be*, the sum of _____ dollars, and the same cannot properly be collected by a resale of the land herein described whereon said tax (or, assessment) was levied:

Now, therefore, the town board of the town of _____ do hereby order and determine, that said tax (or, assessment), being the sum of _____ dollars, as aforesaid, be reassessed and relieved upon such real estate as an additional tax for the year A. D. 18—.

The said real estate herein referred to is described as (*here give description of same.*)

Given under our hands this _____ day of _____, 18—.

_____,
_____,
_____, } *Town Board.*

NOTE.—Section 1088. See form of notice of sale under section 1098.

(1) *Form of Notice as to Payment of Taxes under Section 1089.*

Notice is hereby given by the undersigned, town treasurer of the town of _____, that the tax roll for said town, for the

To collect all
taxes not paid
by Jan. 1.

public places in such town, that the tax roll for such town is in his hands for collection, and that the taxes charged therein are subject to payment at his office, at any time prior to the tenth day of January in such year, and after the said tenth day of January he shall proceed to collect the taxes charged in such roll and remaining unpaid, and for that purpose shall call at least once on the person taxed, or at the place of his usual residence, if within the town, and demand payment of the taxes charged to him on such roll (a).

Per cent. remit-
ted on taxes
paid before
Jan. 1.

SECTION 1090. (As amended by sec. 3, ch. 269, Laws 1881.) On all taxes paid or tendered at the office of such treasurer prior to said tenth day of January, he shall remit all of the five per cent. collection fees, except so much thereof as he is authorized by law to have for his fees upon taxes so paid.

Town and coun-
ty orders and
jurors' certi-
ficates receivable
in payment of
taxes.

47 Wis. 223.

SECTION 1091. Town orders shall be receivable for taxes in the town where issued, and shall be allowed the town treasurer on settlement of town taxes; and county orders and jurors' certificates shall be receivable for taxes in the county where issued, and shall be allowed such treasurer on settlement of county taxes with the county treasurer; but no town treasurer shall receive town orders in payment for taxes to a larger amount than the town taxes included in his assessment roll, exclusive of all taxes for school purposes, nor county orders and jurors' certificates to a greater amount than the county tax included therein.

No officer to
purchase or-
ders, etc., in
payment of
taxes.

SECTION 1092. No town or county treasurer, or other town county officer shall, either directly or indirectly, purchase or receive in exchange or in payment for taxes or otherwise, in any manner whatever, any county or town order, or any demand against his county or town, for a claim allowed by the proper board during his term of office, for a less amount than that expressed on the face of such

year 18—, is in my hands for collection, and that the taxes charged therein are subject to payment at my office, at any time prior to the first day of January, 18—.

Dated this ——— day of ———, 18—.

—————, *Town Treasurer.*

(a) A town treasurer must execute his warrant just as it is written. He cannot correct mistakes. The warrant as it is written is his full protection, and the town and county must meet the consequences of the mistakes [Stat. v. O'Malley, 39 Wis. 323.]

order or demand; and any such person so offending shall for each offense forfeit not less than twenty-five, nor more than two hundred and fifty dollars.

SECTION 1093. The town treasurer shall receive the tax on any part of any lot or parcel of land, or on any undivided share or interest therein, which the person paying the tax will clearly define; and if the tax on the remainder of such lot or parcel of land shall remain unpaid, such treasurer shall return such remainder and the tax due thereon to the county treasurer; and if the part on which the tax is so paid shall be an undivided share, the person paying the same shall state to the town treasurer the name of the owner of such share, that it may be excepted in case of sale for the tax on the remainder; for which purpose the town treasurer shall enter the name of such owner and a specification of such share in his account of uncollected taxes; and the balance of taxes on any such land shall be a lien on the residue only on such lot or parcel of land.

Treasurer to receive payment on parts of lots or undivided interests.

Return as to remainder.

SECTION 1094. When any land has been assessed more than once for the same year, the town treasurer shall collect only the tax justly due thereon, and shall make return to the county treasurer of the balance as a double assessment; and he shall be credited therefor by such treasurer.

Proceedings in case of double assessment.

SECTION 1095. The county clerk of each county shall prepare a cause to be printed and furnished to each town, city and village treasurer of his county, a book of tax receipts for each current year, with stubs to be a duplicate of the receipts; and every town, city and village treasurer shall use only the receipts so furnished, and shall enter in each receipt so given by him for the payment of taxes, the name of the person, firm, company or corporation paying the same, the date thereof, the description of the property, and the aggregate amount of taxes paid; and when it appears from the tax roll that the taxes for the previous year remain unpaid upon any tract of land, he shall enter in such receipt under the head of "taxes unpaid for previous year," opposite such tract, the year for which such unpaid tax is due. Such receipt shall be signed by the treasurer, and a duplicate thereof made upon the stub thereof to be left in the book, and after not-

County clerks to furnish treasurers with receipt books.

Their duties on payment.

ing the payment of such taxes upon the tax roll, he shall deliver said receipt to the person entitled thereto.

Treasurers to compare stub-book with tax roll.

SECTION 1096. Every such treasurer shall each year compare the stub book of receipts with the tax roll of his town, city or village, as to the description of land or other property upon which taxes have or have not been paid, and as to the amount of taxes received for taxes; and the said treasurer shall certify on such stub book that he has made such comparison, and that the stub book and tax roll correspond; and the stub book thus certified shall be returned with the tax roll to the county treasurer, who shall file the same with the county clerk, to be by such clerk preserved in his office. Such stub book, or a certified copy thereof, shall have the same effect as evidence as the original receipt.

Effect of stub-book as evidence.

Levy of unpaid taxes by distress and sale

SECTION 1097. In case any person shall refuse or neglect to pay the tax imposed upon him, the town treasurer shall levy the same by distress and sale of any goods and chattels belonging to such person, wherever the same may be found within his town; and if a sufficient amount of such property cannot be found in such town, the town treasurer may levy the same by distress and sale of the goods and chattels belonging to such person, wherever the same may be found in the county or in any adjoining counties.

Notice and conduct of such sale.

SECTION 1098. The town treasurer shall give public notice (1) of the time and place of such sale, at least six days previous thereto, by advertisement containing a description of the property to be sold, to be posted up in three public places in

(1) *Form of Notice of Sale of Property for Non-payment of Tax.*

Public notice is hereby given, that I, A. B., town treasurer of the town of —, county of —, will sell at public auction, on the — day of —, A. D. 18—, at — o'clock in the — noon of said day, at (*designate place*), in the town of — (*where property is*), the following described property belonging to C. D., viz.: (*here describe property*), upon which I have levied by distress, the said C. D. having refused and neglected to pay the tax imposed upon him in the said town of —, for the year 18—, amounting to the sum of — dollars, and shall sell the same as aforesaid, to satisfy the amount of such tax and the costs.

Dated this — day of —, 18—.

—, Town Treasurer.

the town where the sale is to be made. The sale shall be at public auction, in the day-time, and the property sold shall be present; such property may be released by the payment of the taxes and charges for which the same is liable to be sold; if the purchase money on such sale shall not be paid at such time as the treasurer shall require, he may again, in his discretion, expose such property for sale, or sue, in his name of office, the purchaser for the purchase money, and recover the same with costs and ten per centum damages.

Proceedings for resale.

SECTION 1099. If the property so levied upon shall be sold for more than the amount of the tax and costs, the surplus shall be returned to the owner thereof; and if it cannot be sold for want of bidders the treasurer shall return (1) a statement of the fact, and return the property to the person from whose possession he took the same; and the tax, if unsatisfied, shall be collected in the same manner as if no levy had been made.

Surplus to be returned to owner.

If no bidders, property to be returned, etc.

ACTION TO COLLECT TAX ON PERSONAL PROPERTY.

SECTION 1100. In case the town treasurer is unable to collect any tax assessed upon personal property, he shall make and file with some justice of the peace of his county, an affidavit (2),

Action to collect taxes upon personal property.

14 Wis. 623.
25 Wis. 271.
46 Wis. 159.

(1) *Form of Town Treasurer's Return of No Bidders, under Section 1099.*

I, the undersigned town treasurer of the town of _____, hereby make return, that on the _____ day of _____, 18—, at the hour of _____ o'clock in the _____ noon of that day, at _____ (*designate place*), in said town, I did, pursuant to due notice, duly offer for sale at public auction, the following described property belonging to C. D. (*describing same*), upon which I had, as such treasurer, duly levied by distress, because of the refusal (*or neglect*) of the said C. D. to pay the tax imposed upon him in said town for the year 18—, to wit: the sum of _____ dollars; and that such property could not be sold for want of bidders, and was thereupon returned by me to said C. D. (*or other person*) from whose possession I took the same.

Dated this _____ day of _____, 18—.

_____, Town Treasurer.

(2) *Form of Affidavit of Town Treasurer of Inability to Collect Tax on Personal Property.*

STATE OF WISCONSIN, }
County of _____, } ss.

A. B. being first duly sworn, says that he is the town treasurer of the town of _____, in said county; that the tax as

showing that there is such tax upon personal property, the amount thereof, and the name of the person against whom assessed, that he has demanded payment thereof, and is unable to collect the same (a). Such justice shall thereupon issue a summons (1) directed to such person, commanding him to appear forthwith, to answer under oath and show cause why he does not pay said tax. Such summons may be served by said town treasurer, or any constable in said county, by reading the same to such person, or in his hearing; upon its appearing by the affidavit (2) of the officer or

Affidavit.

assessed against C. D., upon his personal property in said town, for the year 18—, amounts to ——— dollars, and that he, the said treasurer, has demanded payment thereof, and is unable to collect the same.

A. B., Town Treasurer.

Sworn and subscribed to before me, this ——— day of ———, A. D. 18—, ———, Justice of the Peace.

(1) *Form of Justice's Summons to Delinquent Taxpayer.*

STATE OF WISCONSIN, }
County of ———, } ss.

THE STATE OF WISCONSIN, to C. D., of the town of ——— in said county:

A. B., town treasurer of the town of ———, in said county, having made and this day filed with me, the undersigned justice of the peace of said county, an affidavit stating that there is a tax upon personal property in his town assessed against you, the said C. D., amounting to ——— dollars, and that he, the said treasurer, has demanded payment thereof, and is unable to collect the same: You are therefore commanded forthwith to appear before me, at my office in the town of ———, to answer under oath and show cause why you do not pay said tax.

Given under my hand this ——— day of ———, 18—, ———, Justice of the Peace.

(2) *Form of Affidavit of Service.*

STATE OF WISCONSIN, }
County of ———, } ss.

A. B., being duly sworn, says that he is town treasurer of the town of ——— (or, is a constable), in the county of ———; that on the ——— day of ———, 18—, he duly served the within (or, annexed) summons upon C. D., by reading the same to him (or, in his hearing); that more than twenty-four hours have elapsed since the service of such summons upon the said C. D., and that he has failed and neglected to appear before ———, justice of the peace in said county, by whom such summons was issued. (Signature)

Subscribed and sworn to before me, this ——— day of ———, 18—, ———, Justice of the Peace.

(a) The town treasurer may institute the proceedings provided for in sections 1100-1103, after the return of his warrant. [See *Kellogg v. The City of Oshkosh*, 14 Wis. 634.]

person serving such summons, that the same was duly served upon such person, to whom the same was directed, and that he has failed or neglected to appear before said justice for twenty-four hours after the service of the summons, the said justice shall issue a warrant (1), directed to the sheriff, or any constable of the county, commanding him to forthwith arrest and bring such person before him.

SECTION 1101. The justice before whom such person shall appear or is brought, shall have jurisdiction of the subject matter to the full amount of the tax against such person, with interest, charges and costs; and he shall enter the cause in his docket, as an action wherein the town in which such tax is assessed shall be plaintiff, and the person against whom the same is assessed shall be defendant; and the affidavit of the treasurer shall be deemed the complaint. Such defendant may, on his appearing or being brought before such justice and before submitting to an examination, as hereinafter provided, remove such action to the next nearest justice in the

Justice to have jurisdiction.

To enter cause as an action.

Complaint.

Removal.

(1) *Form of Warrant for Arrest of Delinquent Taxpayer.*

STATE OF WISCONSIN, } ss.
 ——— County.

THE STATE OF WISCONSIN, to the sheriff or any constable of said county, greeting:

Whereas, A. B., town treasurer of the town of ——— in said county, did, on the ——— day of ———, 18—, make and file with me, the undersigned justice of the peace of said county, an affidavit stating that there is a tax upon personal property in his town assessed against C. D., amounting to ——— dollars, and that he, the said treasurer, has demanded payment thereof, and is unable to collect the same; wherefore, prior to the ——— day of ———, 18—, I, the undersigned justice of the peace, issued a summons directed to said C. D., commanding him forthwith to appear before me at my office in said town of ———, to answer under oath and show cause why he does not pay said tax; and it appearing from the affidavit of E. F., who served such summons, that said summons was duly served upon the said C. D., the person to whom the same was directed as aforesaid, by reading the same to him (or in his hearing), and that the said C. D. has failed or neglected to appear before me, the said justice, for twenty-four hours after the service of said summons:

You are hereby commanded to forthwith arrest and bring the said C. D. before me, at my office aforesaid, to be further dealt with according to law; and have you then and there this warrant.

Given under my hand this ——— day of ———, 18—.
 ———, Justice of the Peace.

same county, upon making and filing with such justice an affidavit (1), stating that from prejudice or other cause, he believes such justice will not decide impartially in the matter; and thereupon the justice shall transmit all the papers, with a copy of his docket entries in such action, to such nearest justice; and if the defendant be under arrest, the officer having him in charge shall take him before such nearest justice. Such nearest justice shall enter the action in his docket, and proceed in the manner hereinafter provided; if such defendant be not under arrest, and shall fail to appear before such last named justice within one hour after the receipt of the papers in such action, he may issue his warrant, directed to the sheriff or any constable of his county, commanding him to forthwith arrest such defendant and bring him before such justice.

Proceedings on trial.

§5 Wis. 271.

SECTION 1102. When the defendant shall appear, or be brought before the justice before whom such proceedings were commenced, or if the cause shall have been removed to another justice, before such last named justice, such justice shall cause the defendant to be examined on oath, and hear the testimony of any witness, or other evidence presented by either party, upon the following questions:

Questions to be considered.

1. Whether the defendant has any personal property liable to taxation at the time the assessment was made.

When defendant to be discharged.

2. Whether he has money or property, real or personal, of any description, sufficient to pay such tax or any part thereof.

In what case judgment to be entered.

3. Whether he is justly liable for the payment of such tax, or any part thereof; and if any of said questions shall be established in the negative,

(1) *Form of Affidavit for Removal of Proceedings from Justice.*
The Town of —, Plaintiff,
against

C — D —, Defendant.
County of —, ss.

C. D., being first duly sworn, says that he is defendant in the above entitled action, and believes that G. H., the justice of the peace before whom said action is pending, will not decide impartially in the matter involved therein, from prejudice (or other cause, stating it).

C — D —,
Subscribed and sworn to before me, this — day of —,
18—.

— —, Justice of the Peace.

the defendant shall be discharged with his costs; but if the defendant shall refuse to answer such relevant questions as shall be put to him, or if he shall fail to establish either of said questions in the negative, judgment shall be entered against the defendant for the amount of such tax, which he ought to pay, with costs of such proceedings; but if it shall be made to appear that during the time that such treasurer had the tax roll in his possession for collection, the defendant had property on his premises in such town, not secreted from such treasurer sufficient to pay such tax, and out of which such treasurer might have collected the same, no costs shall be recovered against such defendant. No stay of execution shall be allowed on any such judgment, except in case of appeal; and no property of such defendant shall be exempt from levy and sale upon execution issued thereon. The justice shall reduce the examination of the defendant and of all witnesses produced and examined by either party, to writing, and cause the same to be signed by the persons so examined.

Costs, when not recovered.

Execution, when stayed.

Testimony to be reduced to writing.

SECTION 1103. The treasurer may file a transcript of any such judgment rendered against the defendant in any such action, in the office of the clerk of the circuit court of any county; and the same shall be docketed by such clerk in the same manner as other transcripts of justices' judgments; and when so docketed, it shall be a lien on all the real estate of the defendant in every county in which the same is docketed. The clerk of any circuit court in which any such transcript is filed and docketed, may issue execution thereon; and no real or personal estate of the defendant shall be exempt from seizure and sale on such execution; and upon the sale of any real estate by the defendant, by virtue of such execution, the sheriff selling the same shall make, execute and deliver to the purchaser thereof a deed of the same, and the defendant shall have no right to redeem the said real estate after the sale thereof; and such deed shall be absolute to convey all the interest of the defendant in such real estate so sold as aforesaid; and the sheriff shall proceed in the sale of such real estate as upon sale on execution in other cases.

Transcript of judgment, where filed.

When judgment a lien.

Execution may issue; no exemption.

Sheriff to execute deed on sale.

SECTION 1104. The defendant may, within twenty

Either party may appeal.

Return on appeal.

days after the entry of any such judgment, appeal to the circuit court, by executing and delivering to the justice an undertaking to the town, with one or more sureties, to be approved by such justice, conditioned to pay any judgment the said circuit court may render against him in such action; and upon the receipt of such undertaking the justice shall return the same with the examinations and evidence taken by him, and all other papers and proceedings in such action, duly certified by him, to the said circuit court. The plaintiff may also appeal from any such judgment or from any judgment discharging such defendant, to the said circuit court, in the same manner that a plaintiff to a civil action in a justice's court may appeal from a judgment rendered therein; and upon taking such appeal, the justice shall make a like return to the circuit court as upon an appeal by the defendant.

Appeal, how tried.

District attorney to appear for plaintiff.

SECTION 1105. Upon filing the return of the justice by the clerk of the circuit court, such action shall be tried in such court as other actions therein; and the district attorney of the county shall appear for and try such action on behalf of the plaintiff whenever requested by the town treasurer so to do. Upon the trial in such court either party may read as evidence the examinations taken by the justice and returned by him to such court, and produce such other proofs as they may deem necessary. The issues shall be the same as before the justice, and if, upon the trial in the circuit court, neither of said issues shall be established in the negative, or if the defendant shall neglect or refuse to appear on such trial and answer all relevant questions which shall be put to him, the judge or jury, by whom such action is tried, shall assess the amount of the tax, which the defendant ought to pay; and judgment shall be rendered against him and his sureties in said undertaking for the amount so assessed, and for all costs, fees and disbursements, before the justice and the circuit court; and execution shall issue upon such judgment against the property of all the defendants in such judgment, and no property belonging to the defendant in the action shall be exempt from seizure and sale on such execution; but if either of such issues shall be

established in the negative, the action shall be dismissed and the defendant shall recover his costs.

SECTION 1106. In case execution in any such action upon a judgment rendered upon an appeal, or upon a transcript of a judgment of such justice, shall be returned unsatisfied, in whole or in part, the proper treasurer is hereby authorized to institute proceedings supplementary to execution, to collect such judgment; and all laws applicable to supplementary proceedings upon other judgments are made applicable to the judgment above mentioned.

Proceedings supplementary to execution.

SECTION 1107. A final judgment in such action upon the ground that the defendant had no personal property liable to taxation at the time the assessment was made, or that he is not justly liable to pay any portion of such tax, shall be a bar to any further proceedings of any kind for the collection of such tax; and every such judgment against the defendant, fixing the amount of tax which he ought justly to pay, shall be conclusive as to the extent of his liability; and in fixing the amount which the defendant ought justly to pay, all irregularities, mistakes and errors in the assessment and proceedings, which do not affect the justice and equity of such tax or some part thereof, shall be disregarded.

Final judgment a bar, when.

EXTENSION OF TAX WARRANTS.

SECTION 1108. The town board of any town, the board of trustees of any village which collects taxes independently, and the common council of any city, shall have power to extend the time for the collection of the taxes in such town, village or city, for such period of time, not exceeding forty-five days, as the said board or common council may deem necessary. The order extending the time may be in the following or equivalent form, to be indorsed upon the warrant annexed to the tax roll of such town, village or city:

Town, village or city may extend time for collection of taxes.

We hereby renew this warrant for — — days. Form of order.

Dated this ——— day of ———.

Supervisors of the town of ———, or mayor and clerk of the city of ———, or president and clerk of the village of ———.

SECTION 1109. The treasurer shall have the same authority to proceed in the collection of all

Authority not changed by such extension

taxes contained in the tax roll, after as before such extension of time; and the return of any such treasurer to the county treasurer within the time so extended shall be as valid and effectual as if made pursuant to the direction of the original warrant. The extension of time for the collection of taxes shall not postpone the time for the payment to the county treasurer of the state tax included in any town or city tax roll.

State and county tax, when to be paid.

24 Wis. 312.
25 Wis. 508.
47 Wis. 223.

SECTION 1110. (As amended by chapter 188, Laws 1882.) The town treasurer shall retain in his hands the amount specified in his warrant to be paid into the town treasury, together with his fees, and shall, on or before the day specified in his warrant for paying the money therein directed to be paid to the county treasurer, pay to him the sum so directed to be paid in the manner provided by law; and the town treasurer shall pay over the full amount of state tax on or before the last Monday of January of each year, though it may occasion a deficiency in the town taxes (a).

County treasurer to give duplicate receipts.

SECTION 1111. Whenever any town treasurer shall pay any money to the county treasurer, such county treasurer shall deliver to him duplicate receipts for the amount of money so paid, specifying in such receipts the sum paid, date of payment, and on what account the same is paid; and the town treasurer shall present such receipts to the county clerk, who shall countersign one of said receipts, and return the same to such treasurer, and shall retain and safely keep the other in his office; and no receipt of the county treasurer given to a town treasurer for money paid by such town treasurer shall be any evidence of such payment, in favor of such town treasurer, unless the same be first countersigned by the county clerk.

How countersigned.

Delinquent taxes, when returned.

SECTION 1112. If the town treasurer shall be unable to collect any taxes mentioned in the tax roll annexed to his warrant, within the time prescribed by law, he shall make out a statement of the taxes so remaining unpaid, including the five per cent. allowed by law for collection fees, distinguishing, by setting down separately, between

(a) The town treasurer is required to pay out of moneys collected, the state tax first; if the amount remaining is not sufficient to pay both the town and county taxes, he is entitled to retain the amount specified in his warrant as town taxes, together with his fees, paying to the county treasurer only the balance of the amount in his hands. [*Winchester v. Tozer*, 24 Wis. 312.]

such as are on real, and such as are on personal estate, with a full and perfect description of such real estate, from his tax roll, and the name of the person taxed, if therein specified, and by setting down separately all public lands which are held on contract, and all lands mortgaged to the state, and submit the same to the county treasurer; he shall also include in such statement a description of any land doubly assessed, and the amount of tax thereon, and also the specification and entry required by section one thousand and ninety-three. The county treasurer shall carefully compare such statement, when submitted, with the tax roll, and ascertain that it is correct.

SECTION 1113. The return of the town treasurer to the county treasurer of delinquent taxes may be made in tabular form, and varied as facts may require, but when so made, shall be, as nearly as convenient, after the following form:

Form of return
by town treasurers.

54 Wis. 420.

Return of ———, treasurer of the town of ———, in the county of ———, and state of Wisconsin, containing a description of the lands and the taxes thereon, and the valuation of personal property and the taxes thereon, if any, assessed in said town in the year ———, which taxes remain due and unpaid for the years herein specified, to wit:

Names of persons taxed.	Description of lands and statement of personal property.	Section	Township.		Range.	Number of acres.	Amount of tax.		Years for which taxes are due.	Remarks.
A. B.	N hf. of N. E. qr	34	3	19	80	\$5 60	18	....	
C. D.	Undivided $\frac{3}{8}$ E. hf. of N. E. qr.	34	3	19	53	2 74	18	....	
do.	do. omitted in 18—	34	3	19	53	2 25	18	....	
Unknown	E. hf. of S. E. qr	18	3	19	80	2 00	18	....	

Public lands held on contract and lands mortgaged to the state:

A. B.	S. W. qr. of S. E. qr.	16	20	16	40	\$5 50	18
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Personal property:

A. B.....	Valuation, \$300.....	\$3 00.....
-----------	-----------------------	----	----	----	----	-------------	------

The taxes on the following shares or parcels of land above returned, have been paid by the following named owners.

E. F.....	Undivided hf. of the E. hf. of N. E. qr.....	34	3	19	40	\$1 37	18—.....
-----------	-------------------------------------------------	----	---	----	----	--------	----------

The following land is returned as doubly assessed for the year 18—:

R. S.	S. hf.	17	3	19	320	\$9 60	18—.....
Unknown	W. hf. of N. W. qr.	4	3	19	80	2 00	18—.....

O. H., *Town Treasurer.*

Return sworn
to, and where
filed.

SECTION 1114. The town treasurer shall then make an affidavit (1), to be annexed to such statement, before the county treasurer, or before any officer authorized to administer oaths, that the facts set forth in said statement are correct, that the sums therein returned as unpaid taxes have not been paid, and that he has not, upon diligent inquiry, been able to discover any goods or chattels belonging to the persons charged with such unpaid taxes, whereon he could levy the same; which statement and affidavit shall be filed with the county treasurer; and he shall thereupon be credited by the county treasurer with the amount of taxes so returned as unpaid and doubly

Credit given.

42 Wis. 332.
47 Wis. 223.
54 Wis. 415.

(1) *Form of Affidavit to be Annexed to Statement.*

STATE OF WISCONSIN, }
County of —, } ss.

O. H., being duly sworn, says that he is the town treasurer of the town of —, in said county of —, who makes the annexed and foregoing statement; that the facts set forth in said statement are correct; that the sums therein returned as unpaid taxes have not been paid; and that he has not, upon diligent inquiry, been able to discover any goods or chattels belonging to the persons charged with such unpaid taxes, whereon he could levy the same.

O. H.
Subscribed and sworn to before me, this — day of —, 18—.

— —, *Justice of the Peace.*

assessed, except the five per cent. collector's fees, and he shall be allowed by the county treasurer, in settlement, his fees for making his return. If any actions have been commenced by him for the recovery of any personal property tax, he shall also state that fact, and what proceedings have been had therein. And any town treasurer who shall render his return without duly making, annexing, subscribing and making oath to the affidavit, as above required, shall forfeit one hundred dollars; and every county treasurer who shall receive such return, and credit the amount of unpaid and doubly assessed taxes to the town treasurer, without first requiring such return to be duly verified by affidavit, as above required, shall forfeit two hundred dollars; and neither said town or county treasurer shall be permitted to offer such unverified statement in evidence, in any settlement made by them with their respective boards of supervisors or auditing officers, nor in any action brought against them on their respective official bonds, nor in any prosecution against them for embezzlement. All taxes so returned as delinquent shall belong to the county, and be collected, with the interest and charges thereon, for its use; and all actions and proceedings commenced and pending for the collection of any personal property tax, shall be thereafter prosecuted, and judgments therein be collected, by the county treasurer for the use of the county; but if such delinquent taxes, exclusive of the five per cent. collection fees, exceed the sum then due the county for unpaid county taxes, such excess, when collected (with the interest and charges thereon), shall be returned to the town treasurer for the use of the town.

Actions re-
turned.

Penalty for neg-
lect.

Delinquent
taxes belong to
county.

SECTION 1115. The county treasurer shall, at the time the town treasurer makes his return to him of the delinquent taxes aforesaid, make and deliver to such town treasurer a certificate of the amount of the delinquent taxes so returned by such town treasurer, specifying the amount delinquent on real estate and the amount on personal property; and it shall be the duty of the town treasurer to whom such certificate is given, forthwith to deliver the same to the county clerk, who shall file the same in his office; and no county treasurer shall indorse the bond of such

County treas-
urer to give cer-
tificate of de-
linquent taxes.

Where to be
filed.

town treasurer, filed in his office, as satisfied and paid, until such certificate shall be delivered to the county clerk and filed in his office as above specified.

How town
treasurers bond
satisfied.

SECTION 1116. Upon filing said certificate by the town treasurer and upon payment to the county treasurer of the full amount of the state tax, and the full amount of the county taxes, after deducting the amount of delinquent taxes, so returned and certified, and his fees for making such returns, the county treasurer shall indorse the bond of such town treasurer, filed in his office, as satisfied and paid; and the indorsement so made shall operate as a full discharge of such town treasurer, and his sureties from the obligations of such bond, unless it shall afterwards appear that the return of such town treasurer was false; in which case such bond shall continue in force, and such treasurer and his sureties shall be liable to be prosecuted thereon, for all deficiencies and for all damages occasioned by such false return.

Effect of.

Penalty on
town treasurers
for failure to
settle taxes.

46 Wis. 328.

SECTION 1117. If any town treasurer shall fail to make settlement of the taxes included in his tax roll, within the time required by law, the county treasurer shall charge such town treasurer five per centum damages and ten per centum interest per annum from the day payment should have been made, on the balance of unsettled taxes due from him; and if any town treasurer shall withhold the payment of any public moneys collected or received by him, after the same should be paid, and shall have been demanded, he shall pay ten per cent. damages and ten per cent. interest, as above specified, on such moneys, which moneys, damages and interest may be collected by action upon such town treasurer's bonds.

Proceedings, if
funds withheld
by town treasurer.

23 Wis. 478.

SECTION 1118. If any town treasurer shall neglect or refuse to pay to the county treasurer the sums in his hands required by law to be paid to him; or if he shall neglect or refuse to account for moneys required by law to be collected and paid by him to the county treasurer, such county treasurer shall issue a warrant under his hand, directed to the sheriff of the county, commanding him to levy such sum, specifying the amount thereof, as shall remain unpaid or unaccounted for, with interest and damages, as speci-

fied in the preceding section, together with his fees for collecting the same, of the goods and chattels, lands and tenements of such town treasurer, and pay the same to the county treasurer, and return such warrant within sixty days from the date thereof; and deliver the same to the sheriff, who shall immediately cause the same to be executed, and make return thereof within the time therein specified, and pay to such county treasurer the amount required by such warrant, or so much thereof as he shall have collected thereon; and such sheriff shall be entitled to collect and receive the same fees as are allowed by law to sheriffs on executions. Nothing in this section shall prohibit prosecution of such treasurer's bond in case of a breach thereof.

SECTION 1119. If any sheriff shall neglect to return any such warrant or to pay the money collected thereon within the time limited for the return of such warrant, or shall make a false return thereto, the county treasurer shall forthwith proceed to collect of him the whole sum directed to be levied by such warrant, in the same manner as such sheriff might be proceeded against for neglecting to return an execution in a civil action; and if he shall fail to collect such money of the sheriff, he shall forthwith cause a prosecution to be commenced against him and his sureties on his official bond for the sum due on such warrant, which sum, when collected, shall be paid into the county treasury.

Proceedings
against sheriff,
for neglect, etc.

SECTION 1120. If any person shall be injured by the false return or fraudulent act of any town treasurer, such person shall recover upon action brought on the bond of such treasurer, of him and his sureties, double damages and costs of suit.

Damages for
false return, etc.

* * * * *

SECTION 1134. It shall be unlawful for any town or county officer, or county board to make any contract or agreement with the printer or any other person by which the said fees or compensation, or any part thereof, or the fees and compensation hereinafter provided for the publication of the notice of the time when redemption of lands sold for taxes will expire, or any part thereof, may or shall, directly or indirectly, inure to the use or benefit of any such town or county officer; and if

Officers not to
share in fees for
publication.

Penalty.

any such officer or printer shall violate the provisions of this section, he shall forfeit not less than two hundred and fifty nor more than one thousand dollars.

MISCELLANEOUS PROVISIONS.

* * * * *

Proceedings
when towns
neglect to elect
taxing officers.

SECTION 1152. Whenever the people of any territory which has been or shall hereafter be set off as a separate town shall neglect or refuse to elect the officers required by law to be chosen therein, by reason whereof the property of such town shall fail to be assessed in the manner provided by law, the county board shall issue their warrant to the assessor and to the treasurer of a town next adjoining, requiring them to assess and collect respectively the amount of taxes due from such town to the state and county, till an election shall be held therein; and thereupon such assessor and treasurer shall severally discharge all the duties in regard to the assessment and collection of said taxes within said town, that would have devolved upon them had they been duly elected assessor and treasurer respectively for said town; and for any malfeasance in respect thereof, said treasurer shall be liable on his official bond, or said board of supervisors may, if they think necessary, require him to execute a new bond to the county treasurer, in such sum and with such surety as they shall direct.

* * * * *

Loss by default-
ing officers
charged to
towns, etc.

SECTION 1157. All losses that may be sustained by the default of any officer of any town, city or village, in the discharge of the duties imposed by this title, shall be chargeable to such town, city or village; and all losses sustained by the default of any county officer, in the discharge of such duties, shall be chargeable to such county; and the county board shall add all such losses to the next year's taxes of such town, city or village, or county, as the case may require.

* * * * *

Proceedings,
when towns
neglect to levy,
etc., state or
county tax.

SECTION 1163. Whenever any town shall have failed to levy, collect or pay over to the county treasurer any state or county tax, apportioned to

and charged against such town in any year, or any part thereof, the county board of such county shall, in the next or any succeeding year, charge all such delinquent taxes, and a penalty of twenty-five per cent. to such delinquent town; and the county clerk shall add the same to the amount of the annual state and county tax apportioned to such town for such succeeding year.

SECTION 1164. (As amended by chapter 341, Laws 1885). Any person aggrieved by the levy and collection of any unlawful tax assessed against him in any town, city or village, may have and maintain an action against such town, city or village, for the recovery of all money so unlawfully levied and collected of him and every such action to recover back any such money hereafter paid shall be brought within one year after such payment, and not thereafter; and no such action shall be brought to recover any such moneys heretofore paid, unless such action shall be brought before the first day of April, in the year one thousand eight hundred and seventy-nine; and in case any such town, city or village shall have paid a judgment, recovered in any such action, after having paid over to the county treasurer the state and county tax, levied and collected as part of such unlawful tax, such town, city or village shall be credited by the county treasurer on the settlement with the proper treasurer for the taxes of the ensuing year, the whole amount of such state and county tax so paid into the county treasury; and the county treasurer shall also be allowed by the state treasurer the amount of state tax so illegally collected and paid, in his settlement with the state treasurer, next after the recovery of such judgment and collection thereof; and if any part of such unlawful tax shall have been paid over to any school-district before the payment of such judgment, such town shall charge the same to such district; and the town clerk shall add the same to the taxes of such school-district in the next annual tax. Provided, however, that no action shall be maintained under the provisions of this section, unless it shall be made to appear to the court, that the plaintiff has paid more than his equitable share of such taxes.

Persons paying
illegal taxes,
may recover
same.

18 Wis. 247, 257.
20 Wis. 191, 305.
21 Wis. 44, 516.
25 Wis. 594.
29 Wis. 51, 79.
30 Wis. 178.
33 Wis. 445, 505.
42 Wis. 97, 315.
52 Wis. 388, 466.
57 Wis. 5.

Remedy of
town, etc.

If paid to school
district, to be
paid thereby.

Suit continued
for re-asses-
ment.

SECTION 1164a. (As amended by section 3, chapter 255, Laws 1879 and chapter 132, Laws 1881.) In any action which has been or which shall be commenced for the recovery of any sum or sums of money paid as and for taxes levied either upon real or personal property, or both, if upon the trial it shall appear that the assessment upon which the taxes were so paid is void, the court, before entering judgment in the action, shall continue the action for a sufficient and reasonable time to permit a re-assessment, under the provision of law, of the property affected by such void assessment, and such re-assessment shall thereupon be made in accordance with the provisions of law. If from such re-assessment and apportionment when made in accordance with law, it shall appear that the sum or sums paid for taxes by the plaintiff are no greater than his equitable and just share of the taxes as so re-assessed and apportioned, judgment shall be entered for the defendant, and if from such re-assessment and apportionment it shall appear that the plaintiff has paid more than his equal and just share of the taxes, judgment shall be entered in his favor for the excess only over such equal and just share. The validity of the re-assessment hereinabove provided for, may be attacked and determined, and subsequent re-assessments may be had in manner and form as provided by section one thousand two hundred and ten b of the revised statutes, as amended. Provided, that such re-assessment may, in all cases, be made by the assessor of the town wherein the land or property to be re-assessed is situated (a).

When judgment to be rendered for defendant.

* * * * *

THE ASSESSMENT AND COLLECTION OF SPECIAL TAXES.

Special assessments, etc., how collected.

SECTION 1164c. Whenever the qualified electors of any town, at any legal meeting, shall have voted to raise money for the purpose of building or repairing any bridge or town-house or other special purpose, to the amount of one thousand dollars or upwards, more than six months previous

(a) Section 1164b was repealed by section 4 chapter 255, laws of 1879.

to the time for the completion and delivery to the town treasurer for collection of the next regular annual tax roll of such town, the supervisors of such town may, in their discretion, require the clerk of such town to make out a tax roll by copying the last regular annual tax roll of said town, excepting the taxes specified therein, and upon the roll so made out, to apportion and carry out the special tax so voted to be raised. The said clerk shall attach to said roll, when completed, a warrant in the usual form, excepting that such warrant shall require the treasurer to retain and pay out as town treasurer, according to law, the whole of the taxes collected by him, by virtue thereof, and to make return of said warrant, with said roll annexed, to said town clerk, with his doings thereon, within sixty days.

Warrant for.

SECTION 1164*d*. The town treasurer shall execute a bond to the supervisors of the town in a sum double the amount of such tax, with sureties, to be approved by the chairman of said supervisors, conditioned that he will faithfully account for and pay over according to law all moneys that shall come into his hands as such treasurer, under and by virtue of said warrant.

Special bond of town treasurer.

SECTION 1164*e*. The clerk shall thereupon deliver said tax roll and warrant to the treasurer; and the said treasurer shall proceed to collect the same in the same manner that general taxes are collected.

Treasurer to receive and collect tax roll.

SECTION 1164*f*. If the treasurer shall be unable to collect any part of said taxes, he shall return to the town clerk a list of such delinquent and uncollected taxes, under oath in the usual form; and the said clerk shall add such delinquent taxes to the taxes against the same property and persons in the next regular annual tax roll of such town, and the same shall be collected in the same manner as other taxes in said annual tax roll (*a*).

Delinquent taxes, how collected.

(a) Chapter 50, "of lands sold for taxes," having no reference to duties of town officers, is omitted.

OF HIGHWAYS AND BRIDGES.

(Chapter LII, R. S. 1878.)

Commissioners
of highways,
their duties.

26 Wis. 546.
37 Wis. 84.
41 Wis. 28.
56 Wis. 609.
57 Wis. 379.

SECTION 1223. The supervisors of the several towns shall have the care and supervision of the highways and bridges therein; and it shall be their duty:

1. To give directions for repairing the highways and bridges within their respective towns, and cause to be removed all obstructions therefrom (a).

2. (As amended by ch. 103, Laws 1885.) To cause all legal highways not fully and sufficiently described or recorded (1), and such of the roads

(a) Every railroad corporation is required by section 1836 to restore every stream, watercourse, street, highway, etc., across, along, or upon which its railroad may be constructed to its former state, or to such condition as that its usefulness shall not be materially impaired, and thereafter to maintain the same in such condition against any effects in any manner produced by such railroad.

The public authorities have the right, and it is their clear legal duty to remove without delay a palpable obstruction of a highway which interrupts its use, and discommodates and endangers the safety of travelers. [Neff v. Paddock et al., 26 Wis. 546.] See Hubbell v. Goodrich et al., 37 Wis. 84.

It is the duty of the keeper of any common jail, upon written request from the chairman of any town, to detail tramps confined in said jail to such town, in charge of an officer to work upon the highways or other public improvements—the town to sustain necessary expense in transporting such officer and prisoners to and from the place of labor. Laws 1879, chap. 188 sec. 9.

(1) *Form of Order Ascertaining, etc. Road not Sufficiently Described.*

COUNTY OF _____, }
Town of _____, } ss.

Whereas, a road leading from _____ to _____ in said town, and used as a highway, was laid out by the supervisors of said town, but was not sufficiently described:

Now, therefore, having caused the said road to be ascertained and described, such description being as follows, to wit: Four rods wide, the center of said road being the following survey: (*Insert survey.*) We, the undersigned, supervisors of said town, do hereby order that said road be entered of record, as above described, in the town clerk's office of said town.

Given under our hands at _____, this _____ day of _____, 18—.

_____, }
_____, } Supervisors.
_____, }

used as highways, as have been laid out, but not fully and sufficiently described or recorded (2) to be ascertained, described and entered of record in the town clerk's office.

3. To cause bridges which are or may be erected over streams intersecting highways to be kept in repair.

4. To divide their respective towns into so many road districts as they shall judge convenient, and specify every such division in writing, under their hands, to be recorded in the office of the town clerk; but no such division shall be made within ten days next preceding the annual town meeting (1).

(2) *Form of Order Ascertaining Road not Sufficiently Recorded.*

COUNTY OF ———, } ss.
Town of ———.

Whereas, a road leading from ——— to ——— in said town, was lawfully laid out and has been used as a highway up to the date hereof, to wit: the ——— day of ———, 18—, but was not fully and sufficiently recorded:

Now, therefore, we, the supervisors of said town, do hereby order that the said road be entered of record in the town clerk's office of said town, as follows, to wit: (*Here give particulars and full description of the road as originally made, including survey, if one was made.*)

Given under our hands at ———, this ——— day of ———, 18—.

———, }
———, } Supervisors.
———, }

(1) *Form of Order Dividing Town into Districts.*

COUNTY OF ———, } ss.
Town of ———.

We, the supervisors of said town, do hereby order that said town be and the same is hereby divided into ——— road districts, as follows: Road district number one shall include (*here insert description of the land embraced in such district*). All the inhabitants liable to work on highways residing in said district are hereby assigned to said road district number one. (*And if the inhabitants not residing in said road district be assigned thereto, add also.*) The following named inhabitants (residing out of said district are also assigned to the same, to wit: A. B., residing in ———, C. D., residing in ——— (*describe residences by districts or sections*).

Road district number two shall include, etc. (*describe each district and assign the inhabitants as above*).

Given under our hands at ———, this ——— day of ———, 18—.

———, }
———, } Supervisors.
———, }

5. To assign to each of the said road-districts such of the inhabitants liable to pay taxes on highways as they shall think proper, having regard to the nearness of residence as much as practicable.

6. To require the overseers of highways from time to time, and as often as they shall deem necessary, to perform any of the duties required of them by law.

7. To assess the highway taxes in their respective towns in each year as provided by law.

8. To lay out and establish upon actual survey, as hereinafter provided, such new roads in their respective towns as they may deem necessary and proper; to discontinue such roads as shall appear to them to have become unnecessary; and to widen or alter such roads when they shall deem necessary for the public convenience; and perform all other duties respecting highways and bridges directed by this chapter.

Streets and alleys, how made highways.

SECTION 1224. The town board of any town, within which may be situated any village or other plat, duly certified and recorded, according to law, and not included within the limits of any incorporated village, may make an order, to be recorded by the town clerk, declaring such streets and alleys in such village or other plat, as they may deem necessary for the public use, to be public highways, without any other survey or description than that made in such recorded plat (1).

Highway taxes expended by contract or otherwise.

SECTION 1225. Whenever any town shall have voted to raise the highway taxes therein in money, it may direct that the money derived

(1) *Form of Order under Section 1224.*

COUNTY OF —, }
Town of —, } ss.

Whereas, the plat of the village of — (or other plat) has been duly certified and recorded according to law, the same not being included within the limits of any incorporated village: Now, therefore, we, the town board of said town of —, deeming the streets and alleys in such plat to be necessary for the public use, do order that the same be, and they are hereby declared to be, public highways. (*If only a portion of the streets are deemed necessary for public use, describe such by the names thereof upon the plat; if alleys, describe their position upon plat with reference to lots, blocks, etc.*)

Given under our hands, this — day of —, 18—.

—, }
—, } Town Board.
—, }

from such taxes be expended under the direction of the town board, or by three highway commissioners to be elected for that purpose. Such supervisors or commissioners shall in such case expend the avails of such taxes upon the highways and bridges in such town, by the employment of labor thereon and furnishing materials therefor; or if so instructed by the town, at an annual town meeting, they may let, by special contract (1), to the lowest bidder, or otherwise, as

(1) *Form of Contract under Section 1225.*

Whereas, the town of —, in — county, did, at the annual town meeting held on the — day of —, 18—, vote to raise the highway taxes of said town in money; and

Whereas, the said town did, at the same meeting, instruct the town board (or, three highway commissioners duly elected at said meeting) to let by special contract to the lowest bidder, or otherwise, as they, the said town board (or, commissioners), might deem for the interest of the town, any or all of the highways and bridges (if not all, specify what highway or highways, bridge or bridges) in said town, to be kept in repair for the term of — years (not exceeding five); and

Whereas, the undersigned town board (or, said commissioners) deeming it for the interest of the town that said contract should be let to the lowest bidder, did give due notice on the — day of —, 18—, of the time and place at which they would receive bids therefor (a copy of which notice is hereto annexed); and having received then and there all bids that were offered for keeping said highway and bridges in repair according to the specifications set forth in said notice, and A. B., of —, being the lowest bidder therefor, and his bid having been accepted: Now this agreement witnesseth, that the said A. B. hereby agrees with the undersigned, the town board (or highway commissioners) of said town of —, that for and in consideration of the sum of — dollars to be paid to him by said town in manner following, to wit: (*state time and terms of payment*), he will well and faithfully keep the highways and bridges in said town in good repair, according to the following specifications (*here state particularly, manner in which work is to be done*). for the term of — years from the — day of —, 18—, to the acceptance of the town board (or, of the highway commissioners for the time being) of said town. And the undersigned, the said town board (or, highway commissioners), for and in behalf of said town of —, do hereby agree, in consideration of the performance by A. B. of his agreements aforesaid, that the said town of — will pay the said A. B. for keeping said highways and bridges in repair, as above agreed, the sum of — dollars, in manner and time as aforesaid.

In witness whereof we have hereunto set our hands this — day of —, 18—.

A. B.
—, { Town Board
—, { of Town of
—, { —.

NOTE.—If the contract is not let to the lowest bidder, the form will be easily adapted by omitting the recitals in regard to notice of receiving bids, etc.

they may deem for the interest of the town, any or all the highways and bridges in such town, to be kept in repair for a term not exceeding five years. If no directions be made by any such town for the expenditure of such money, the same shall be expended under the direction of the town board.

Tax for opening and repairing highways.

SECTION 1225a. (Ch. 243, Laws 1885). The supervisors of any town are authorized to levy a tax on all taxable property of the town, to be placed on the tax roll and collected as other taxes, for the purpose of opening or repairing highways in such towns, whenever they shall deem it necessary for the public convenience; but no such tax shall be levied except with the assent of all the supervisors, and shall not exceed the sum of three hundred dollars for any one year, and not more than one such tax shall be so levied and collected in any one year; provided, however, that the tax levy hereinbefore authorized shall not be made in case the tax levy of fifteen mills on the dollar now authorized by law shall have been ordered at the preceding town meeting, and in no case shall the levy exceed the limit now authorized by law.

Statement of supervisors, what to contain.

SECTION 1226. The supervisors of each town shall render to the board of audit, authorized by law to settle their accounts at each annual meeting of such board, a statement in writing, containing (1):

(1) *Form of Annual Statement of Supervisors to Town Board of Audit.*

To the board of audit of the town of —, in the county of —:

We, the undersigned supervisors of said town, do hereby render you the following statement, as required by law:

1. The amount of highway taxes assessed in said town for the year ending the — day of —, 18—, is — dollars, and the amount which has been collected is — dollars.

2. The amount of tax collected in money was — dollars, and the amount paid in labor was — dollars.

3. The moneys raised by the town for the improvement or building of roads and bridges, have been disbursed in the following manner, viz: [*To —, for building and finishing a bridge across — creek, \$—, etc.*]. The particular items of such disbursements are as follows: [or, are set forth in the schedule hereto annexed and made a part of this statement].

4. The sum necessary to be raised by the town for the improvement of roads and bridges therein for the ensuing year,

1. The amount of highway taxes assessed, and the amount which has been collected, in their town.

2. The amount of tax collected in money, and the amount paid in labor.

3. The manner in which any moneys, raised by the town for the improvement or building of roads and bridges therein, have been disbursed, and the particular items of such disbursements; and

4. An estimate of the sum necessary to be raised by the town for the improvement of roads and bridges therein for the ensuing year, specifying the improvements required; and such board of audit shall cause such statement to be presented at the next annual town meeting.

CHAPTER 175, LAWS 1885.

STEAM ENGINES ON HIGHWAYS.

SECTION 1. Any person or persons owning, propelling, causing to be propelled or hauling, any steam engine upon any public highway in any town of this state shall be liable for all damage that may arise or be caused to any person, or persons or corporation by reason of the propelling, hauling or using any such engine upon any such highway in the following cases: 1st. When such engine with its equipments, shall weigh more than four tons, exclusive of team, if so propelled. 2d. When such engine shall be set or used for any purpose, excepting propelled along the highway, within the limits of any such highway. 3d. When any such engine, while being propelled upon any such highway, shall not carry a red flag, not less than two feet square, in plain sight, and not less than two feet above the top of the smoke stack. 4th. When the engine shall be standing or in motion upon such highway, and the person in charge shall not signal and stop such engine when approached within fifteen rods

Regulating propelling of steam engines on highways.

we estimate at _____ dollars. The improvements required we specify as follows, viz: [*Here state same in full*].

Given under our hands at _____, this _____ day of _____, 18--.

_____,
_____,
_____, } *Supervisors.*

in either direction, by any team of any kind, or any person or persons riding or driving any animal and desiring to pass such engine, or when the person or persons in charge of such engine shall fail or refuse to render all proper assistance possible to enable such team, or person, or persons, riding or driving any animal to pass such engine in safety.

Damages.

SECTION 2. The chairman of any town in which any damage shall be done to any highway, sluiceway or bridge by any such engine weighing over four tons, with its equipments, exclusive of team, being propelled over any such highway, shall have the power to cause to be commenced an action against the owner of such engine, or the person propelling or causing the same to be propelled, in the name and for the benefit of such town, and such money, when collected, shall be paid into the treasury of such town, and be used by such town for the repair of highways, sluiceways and bridges.

GUIDE BOARDS.

Guide boards to be erected and repaired.

54 Wis. 86.

SECTION 1227. The chairman of each town shall cause to be erected at the intersection, within his town, of all main traveled roads with other legally laid roads, suitable guide boards, giving direction and distance from the point of such intersection to adjoining or important towns; and shall keep in repair all guide boards erected, the expense to be paid from the treasury of the town (a). And every such chairman who shall neglect to erect such guide boards or to keep the same in repair, when erected, shall, for each month that he shall so neglect, and for each instance of such neglect for such time, forfeit five dollars; one half to the person making complaint and the other half to the school fund.

Penalty for neglect.

Penalty for defacing.

SECTION 1228. If any person shall deface, injure or destroy any such guide board, and shall neglect for the space of ten days thereafter to repair and restore the same to as perfect a condition as it was previously, he shall forfeit ten

(a) Penalty for malicious injury to guide posts or boards. [Section 4441, R. S.]

Every railroad corporation required to put up and maintain sign boards where track crosses public highway. [Section 1209, R. S.]

dollars, and shall also pay as damages to such town three times the cost of repairing such guide board; and it shall be the duty of every town supervisor, who has knowledge that any such injury has been done, to make diligent effort for the detection of the person by whom the same was done, and to prosecute in the name of the town and collect such damages for its use.

Duty of supervisors in such cases.

OVERSEERS OF HIGHWAYS.

SECTION 1229. In case of failure to elect an overseer of highways in any road district, or if any person chosen to such office shall refuse to serve, or if his office shall become vacant, the town supervisors shall, by warrant (1) under their hands, appoint some other person in his stead, who shall have the same powers, perform the same duties, and be liable to the same penalties, as overseers chosen at town meetings. The supervisors shall forthwith file such warrant in the office of the town clerk, who shall immediately give notice (2) to the person so appointed.

Supervisors to appoint overseers, when, etc.

SECTION 1230. Each overseer of highways, if required so to do by the town board, shall, before

Bond of overseer.

48 Wis. 541.

(1) *Form of Appointment of Overseer of Highways.*

COUNTY OF _____,)
Town of _____,) ss.

Whereas, there has been a failure to elect an overseer of highways for road district No. _____ in said town (or, whereas, A. B., chosen to the office of overseer of, etc. (as above), has refused to serve; or, whereas the office of, etc., has become vacant): Now, therefore, we, the undersigned, supervisors of said town, do hereby appoint C. D. overseer of highways of said district.

Given under our hands this _____ day of _____, 18—.

_____,)
_____,)
_____,) Supervisors.

(2) *Form of Notice of Town Clerk to Person Appointed Overseer of Highways.*

To C—— D——:

You are hereby notified that by a warrant under the hands of the supervisors of the town of _____ in the county of _____, dated and filed this day in my office, you have been appointed overseer of highways of road district No. _____, of said town, in place of A. B., who has refused to serve (or to fill vacancy in said office.

Dated this _____ day of _____, 18—.

_____, Town Clerk.

he enters upon the duties of his office, or whenever so required and within ten days thereafter, execute to the town a bond (1) in such amount as shall be required, and with such sureties as shall be approved by said board, and file the same with the town clerk, conditioned for the faithful discharge of the duties of his office, and the proper application and payment of all moneys that may come into his hands by virtue thereof as provided by law.

Each overseer of highways shall be provided with a book or memorandum by the town clerk, in which he shall keep an accurate account of all moneys coming into his hands by virtue of his office, the amount received and disbursed by him, the name of every person from whom money or labor is due, the amount paid in money or labor, and a correct account of all expenditures by him made as overseer of highways. The book containing the account so kept shall, at all times when required, be furnished for the inspection of the town board, and ten days before the expiration of

(1) *Form of Bond of Overseer of Highway.*

Know all men by these presents, that we, A. B., as principal, and C. D. and E. F., as sureties, of the town of _____, in the county of _____, and state Wisconsin, are firmly bound unto the said town of _____ in the penal sum of _____ dollars, for the payment of which sum to said town, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this _____ day of _____, A. D. 18—.

Whereas, the above bounded A. B. is overseer of highways for road district No. _____, of said town, and has been required by the town board thereof to execute this bond: Now, the condition hereof is such, that if the said A. B. shall faithfully discharge the duties of his office as such overseer, and shall properly apply and pay all moneys that may come into his hands by virtue of said office, as provided by law, then this obligation shall be void; otherwise to remain in full force and effect.

Signed, sealed and delivered in presence of:

_____, [SEAL]
 _____, [SEAL]
 _____, [SEAL]

Form of Approval to be Indorsed upon said Bond.

We hereby approve the within bond, both as to form and amount, and as to the sufficiency of the sureties thereon.

Dated this _____ day of _____, 18—.

_____, { *Town board of*
 _____, { *the town of*
 _____, { _____.

his term of office, shall be handed to the town clerk, to be filed in his office for the inspection of any taxpayer in his district.

SECTION 1231. Whenever in the opinion of the supervisors of any town, any overseer of highways therein shall neglect or refuse to perform any of the duties required of him by law, or which shall have been lawfully enjoined upon him by the supervisors of his town, they may remove him from office and appoint (1) another in his stead; and when no other penalty is prescribed by law, such overseer shall, for every such neglect or refusal, forfeit the sum of ten dollars; and said supervisors shall forthwith prosecute such overseer for the recovery of such penalty.

Supervisors
may remove
overseers, etc.

Penalty on
overseers for
neglect.

GENERAL DUTIES OF OVERSEERS OF HIGHWAYS.

SECTION 1232. It shall be the duty of overseers of highways:

Duties of over-
seers.

57 Wis. 369.

1. To repair and keep in order the highways within the several districts for which they shall have been elected or appointed respectively, and remove all obstructions therefrom.

2. To notify all persons assessed to pay highway taxes, of the time when and place where labor will be received in payment for such taxes.

(1) *Form of Removal of Overseer of Highways, and Appointment of Another in his Stead.*

COUNTY OF —, } ss.
Town of —, }

Whereas, A. B., overseer of highways for road district No. —, in said town of —, has, in our opinion, neglected (or, refused) to perform the duties required of him by law (or, which have been lawfully enjoined upon him by the supervisors of said town): Now, therefore, we, the undersigned supervisors of said town, do hereby remove the said A. B. from the office of overseer of highways for said road district No. — and do hereby appoint C. D. overseer of highways for said district in his stead.

Given under our hands this — day of —, 18—.

—, }
—, } Supervisors.
—, }

NOTE.—Although the statute does not in express terms require it, yet, it is the better practice, for the town board to give the delinquent overseer notice that complaint is made of his neglect of duty, specifying in what particular, and that some day subsequently at a time and place stated, the board would meet and consider the matter, and hear proofs on both sides. If after such hearing the board are of opinion that the charges are sustained, then the order (form 1) can be adopted.—COMPILER.

NOTE.—The town clerk should forthwith give notice to the person appointed, and to the one removed.

3. To collect all highway taxes, as required by law, and to execute all lawful orders of the supervisors.

To make special repairs.

57 Wis. 369.

SECTION 1233. Whenever any highways shall become impassable, by reason of any casual interruption from the falling of timber, the destruction of any bridge, or the washing away or injury of any part of such highway, it shall be the duty of the overseer to cause such highway to be put in passable repair as soon as practicable.

When special repairs applied on subsequent tax.

SECTION 1234. If any person, for the purpose of putting such highway in repair, shall expend in labor, material or money, an amount greater than is assessed to pay on the highway, in such year, such person shall be entitled to receive from the overseer of such district, a certificate for the amount of such expenditure above his highway tax, which shall be a good credit, and shall be allowed to the holder thereof on account of any subsequent highway tax assessed in said district (1).

May procure scrapers, etc.

SECTION 1235. Any overseer of highways may, if he shall deem it necessary, procure a good and sufficient scraper and plow, or either of them, or any other necessary implement for the use of his road district, and pay for the same out of the highway taxes by him collected.

May enter upon adjoining lands, etc.

2 Wis. 257.
34 Wis. 304.
56 Wis. 354.
57 Wis. 364.

SECTION 1236 (as amended by chapter 148, Laws 1883). It shall be lawful for any overseer of highways, or any person acting under his direction, to enter upon any lands adjoining to or near the highway in his district, and construct such drains or ditches as may be necessary for the improvement or preservation of such highways; and any such overseer, or person, as aforesaid, may enter upon any unimproved lands adjoining to or near

(1) *Form of Certificate under Section 1234.*

I, A. B., overseer of highways for road district No. —, of the town of —, in the county of —, do hereby certify that C. D., assessed to pay highway tax in said district for the year 18—, has expended in labor (*material or money, as the case may be*) the amount of — dollars, over and above his highway tax for said year, for the purpose of putting in repair a highway in said district, leading from — to —, which became impassable by reason of casual interruption from the falling of timber (*or the destruction of a bridge, washing away, or other injury*).

Dated this — day of —, 18—.

— —, *Overseer of Highways.*

the highway in his district, and gather or dig any stones, gravel or sand, and cut any wood or trees, and take away the same for the purpose of making or improving such highway; but such overseer or other person shall carefully avoid doing any unnecessary injury upon the same, and in case there shall be within the limits of the highway in any road district any stone, gravel or sand suitable for the improvement of any highway, the same may be taken to improve any highway in any adjoining road district, but the consent in writing (1) of the supervisors of the town in which the said road districts are located, shall be first obtained therefor (a) (b).

May procure material in adjoining district.

SECTION 1237. If any owner or occupant of lands so entered upon or used for any of the purposes mentioned in the preceding section shall feel himself aggrieved, he may apply (2) to the super-

Compensation under preceding section.

57 Wis. 364.

(1) *Form of Consent of Supervisors.*

A. B., C. D., E. F., supervisors of the town of —, here by consent that any stone, gravel or sand, within the limits of the highway in district No. —, suitable for highway improvement, may be taken to improve the highway (specify the highway) in the adjoining road district No. —, of —. (*If borrowing of material is limited to a particular place, so specify.*)

Dated this — day of —, 18—.

_____, } Supervisors of
_____, } the town of
_____, }

(2) *Form of Application for Appraisers under Section 1237.*

To the board of supervisors of the town of —, in — county:

The undersigned being the owner (or, occupant) of the following described lands (*describe same*) in said town of —, adjoining (or, near to) the highway leading from — to —, hereby represents that on or about the — day of —, 18—, A. B., overseer of highways of road district No. — of said town, entered upon said lands, and (*here state fully the acts done for which damages are claimed*) for the purpose of making (or, improving) said highway.

Feeling myself aggrieved thereby, I hereby apply to you for

(a) Section 1236 will not justify an overseer in taking any materials which have already been gathered, cut, dug or prepared for use by the owner. For such illegal taking the overseer will be personally liable to the owner. Only in cases where the materials are properly and legally taken, is the owner obliged to apply to the supervisors for compensation. [*Goodman et al. v. Bradley*, 2 Wis. 257.] An overseer of highways is not protected in entering upon lands and cutting down trees for the purpose of opening a highway for public use, unless the highway has been legally laid out. [*Babb v. Carver*, 7 Wis. 124.]

NOTE.—The taking of land for a ditch to drain a public highway is a taking for a public use. Sections 1236 and 1237, R. S., held constitutional. [*Smeaton v. Martin*, 57 Wis. 361.]

(b) In the absence of any provision to the contrary in its charter, a city may take stones or other material from one street for the purpose of repairing another street therein. [*Huston v. Fort Atkinson*, 56 Wis. 350.]

visors of the town, who shall appoint (1) three disinterested electors of such town to appraise the damages; and such electors, being first duly sworn, justly and impartially to appraise the damages done upon such lands, shall proceed to estimate the same; and the damages, if any, allowed by them, shall be certified (2) under their

the appointment of three disinterested electors of said town to appraise the damages sustained by me, as aforesaid.

Dated this — day of —, 18—. — —.

NOTE—If drain or ditch was constructed, say: of improving (or, preserving) said highway.

(1) *Form of Apportionment of Appraisers.*

To — and — of the town of —, in the county of —:

Application therefore having been duly made by A. B. the owner (or, occupant) of — (describe lands) in the town of —:

You are hereby appointed as disinterested electors of said town, to appraise the damages done upon said lands and accruing to the said A. B. for trees cut thereon and taken therefrom (or, for stones gathered; or, sand and gravel dug thereon and taken therefrom; or, by the construction of a drain or ditch thereon) by the overseer of highways for road district No. —, on or about the — day of —, 18—, in said town, for the purpose of making (or, improving; or, preserving) a highway therein, leading from — to —.

Dated this — day of —, 18—. — —, }

— —, } Supervisors.
— —, }

(2) *Form of Certificate of Appraisers.*

COUNTY OF —, }
Town of —, } ss.

We, the undersigned disinterested electors of the town of —, having been duly appointed by the supervisors of said town to appraise the damages done upon the following lands (describe), and accruing to A. B. the owner (or, occupant) thereof, for trees cut thereon and taken therefrom (or as the case may be) by the overseer of highways of district No. — of said town, on or about the — day of —, 18—, for the purpose of making (improving or preserving) the highway therein leading from — to —, do hereby certify that after having been first duly sworn justly and impartially to appraise the damages done upon said lands, as aforesaid, and having given due notice to all parties concerned, we did, pursuant to such notice, proceed on the — day of —, 18—, to estimate such damages, and * do hereby appraise and allow the same at the sum of — dollars.

Dated this — day of —, 18—. — —, }

— —, } Appraisers.
— —, }

If special advantages are offset, conclude thus from*: And having taken into consideration the special advantages as well as the damages done to said lands by reason of the improve-

hands, and the same shall be audited by the town board, and paid out of the town treasury; said appraisers shall take into consideration the special advantages, if any, as well as the damages done to said lands by reason of any improvement made on said road by such materials so taken.

SECTION 1237a. (Ch. 46, Laws 1885.) 1. The appraisal or estimate of damages provided to be made by three electors, in section 1237, of the revised statutes, or their determination to allow none, in such cases, shall be filed by them, with the town clerk, to be laid before the town board of audit within ten days after the date of their taking the oath provided for in said section; and in default of such filing, the town shall be liable to an action for damages as a trespasser, without any presentation of the claim therefor.

Relating to appeals.

2. Any person aggrieved by the determination of appraisers appointed under section 1237, of the revised statutes, in any case, may appeal therefrom to the circuit court of the county containing such town, by serving upon the town clerk a written notice of appeal therefrom, at any time within thirty days after such appraisal, estimate or determination shall be filed with the town clerk. In like manner, by notice signed by the supervisors, the town may appeal from any such appraisal or estimate. Within ten days after receipt by him of such notice of appeal, the town clerk shall transmit to the clerk of the circuit court of said county, all the papers on file in his office relating to the award of damages so appealed from, and he shall properly certify to the same.

Appeals, how served.

3. The clerk of the circuit court, upon the receipt by him of such notice of appeal, and papers returned thereto, shall enter upon the proper records of his office, the said appeal, entitling the same, with the land-owner, or occupant, as plaintiff, and the said town as defendant. The said appeal shall be considered an action pending in such court, from the time of service of the notice

Duties of the clerk of circuit court.

ments made on said road by such materials so taken, we do hereby appraise and allow said damages at the sum of _____ dollar.

Dated this _____ day of _____, 18--.

_____,
_____,
_____, } Appraisers.

of appeal, subject to a change of place of trial and appeal to the supreme court, as other actions. Such appeal shall be tried by a jury, unless a trial by jury is waived by both parties. Costs shall be allowed to the appellant, if the verdict of the jury is for a more favorable sum, excluding interest, than the award appealed from; if not, costs shall be allowed to the other party, and judgment shall be rendered thereon according to the rights of the parties.

Judgments how paid.

4. Any judgment rendered against a town upon any such appeal, shall be paid in the same manner as other judgments against towns are now required by law to be paid.

Overseer to deliver list of tax payers to town clerk, and he, to supervisors.

SECTION 1238. Each overseer of highways shall, within sixteen days after his election or appointment, deliver to the town clerk a list (1) subscribed by him of the names of all the inhabitants of his road district who are liable to pay taxes on the highways; and the town clerk shall deliver all such lists received by him to the supervisors. If the overseer shall neglect or refuse to deliver such list to the town clerk as aforesaid, the supervisors shall have power to issue a warrant under their hands, directed to any constable in the town, requiring him forthwith to bring such overseer before them to show cause why such list has not been filed with the town clerk according to law (2). The constable's fees

Penalty for neglect.

(1) *Form of List of Names of Inhabitants Liable to Highway Taxes.*

List of names of all the inhabitants of road district No. —, of the town of —, in — county, who are liable to pay taxes on the highways, viz.:

John Smith,
Richard Roe,
etc.,

John Doe,
Wm. Jones,
etc.

Dated this — day of —, 18—

Overseer of Highways of said District.

(2) *Form of Warrant by Supervisors when Overseer Neglects or Refuses to Deliver List.*

COUNTY OF —, }
Town of —, } ss.

To any constable in said town:

Whereas, A. B., overseer of highways of road district No. —, of said town, has neglected (or, refused) to deliver to the town clerk of said town, a list subscribed by him, of the names of all the inhabitants of his said district who are liable

for such service shall be paid by such delinquent overseer.

THE ASSESSMENT AND COLLECTION OF HIGHWAY TAXES.

SECTION 1239. The supervisors of each town shall meet therein within eighteen days after the annual town meeting, and shall then, or at some subsequent meeting, on or before the second Monday of May, assess the highway tax (a) in their respective towns for the ensuing year; and for that purpose they shall make out separate lists for each road district in such town, which list shall contain the following statements:

Supervisors to assess highway taxes, make lists for each district, etc.

55 Wis. 148.

1. The names of all persons liable to pay a highway poll tax in such district.

2. The name of each person assessed for personal property, and the total amount of each such assessment set opposite thereto.

3. A description of all the lots and parcels of land within such district, with the valuation of each lot or parcel set opposite to such description, with the name of the owner or occupant thereof, as the same shall appear on the last preceding tax roll; and if such lot or tract was not separately described in such roll, then in proportion to the valuation which shall have been affixed to the whole tract of which such lot or parcel forms a part; and such lists (1), when complete, shall be subscribed by them.

to pay taxes on the highways, and still neglects and refuses to deliver the same, although more than sixteen days have elapsed since his election (or, appointment, as the case may be). Now, therefore, you are hereby required forthwith to bring the said A. B. before the undersigned supervisors of said town, at _____, to show cause why said list has not been filed with the town clerk according to law. And of this warrant make due return.

Given under our hands at _____, this _____ day of _____ 18—.

_____,
_____,
_____, } *Supervisors*

(1) Form of List under Section 1239.

COUNTY OF _____, }
Town of _____, } ss.

We, the undersigned, supervisors of the town of _____, having duly met at _____, in said town, on the _____ day of _____

(a) The highway tax must be based on the valuation of the preceding year, not of that in which it is levied, or it is void. [*Hebard v. Ashland Co.*, 5 Wis. 145.]

Supervisors
how to make
assessment.

SECTION 1240. (As amended by chapter 60, Laws 1880, and chapter 163, Laws 1883.) In making an assessment of highway taxes, the supervisors shall proceed as follows: 1. Every male inhabitant in each road district, being over the age of twenty-one years and under the age of fifty years, excepting all disabled soldiers who served in the late war, firemen holding certificates of membership in any regularly organized fire company, paupers, idiots and lunatics, shall be assessed to pay a poll tax of one dollar and fifty cents (\$1.50). (a). 2. The residue of the highway taxes, to an amount of not less than one nor more than seven mills on the dollar, shall be assessed on the valuation of real and personal property in each district, but the supervisors in the several towns in the state shall assess any amount of highway tax, additional to the amount

—, 18—, proceeded to assess the highway taxes therein for the ensuing year.

The following is a separate list for road district No. —, containing:

1. The names of all persons liable to pay a highway poll tax in such district.

2. The name of each person assessed for personal property, and the total amount of each such assessment set opposite thereto

3. A description of all lots and parcels of land within such district, with the valuation of each lot or parcel set opposite to such description, with the name of the owner or occupant thereof, as the same appears on the last preceding tax roll.

And we hereby assess upon the valuation of the real and personal property in said road district No. —, a highway tax for the year 18—, at — mills on the dollar of such valuation, as follows:

Names.	Description of land.	Section.	Town.	Range.	No. of acres.	Valuation of real property.	Valuation of personal property.	Total valuation.	Total tax.
.....
.....
.....

—, —, } Supervisors.
—, —, }
—, —, }

Dated this — day of —, 18—.

NOTE.—To the above list must be annexed the warrant provided by section 1241.

(a) Members of a company or battery of organized militia exempt from poll tax. [Section 636, R. S.]

above authorized, which shall be ordered to be assessed at the next preceding annual town meeting, not exceeding fifteen mills on the dollar of such valuation. But no town containing a population of less than five hundred inhabitants shall, hereafter, levy or collect in any one year a highway tax of more than one thousand dollars (\$1,000), including the amount of money that may be voted at any special or general town meeting, and the mill tax herein authorized to be levied by the supervisors. And no town having two congressional townships or more, shall levy or collect a tax, exclusive of the mill tax herein before authorized, of more than two thousand dollars (\$2,000) in any one year.

Limitation or amount of tax.

SECTION 1241. The town clerk shall, under the direction of the supervisors, make duplicates of the several lists, which shall also be subscribed by them. One of such lists for each road district shall also be filed by such clerk in his office, and the other shall be delivered to the proper overseer of highways, with a warrant thereto annexed, signed by the supervisors, which shall be substantially in the following form, viz.:

Town clerk to make duplicates of lists, etc.

To A. B., overseer of road district number ———, in the town of ———, Form of warrant.

You are hereby required to collect from the several persons and corporations named in the annexed tax list, and from the owners of the real estate described therein, the taxes set opposite to such persons, corporations and property, within the time limited by law, and to apply the taxes by you collected, and make due returns as the law requires.

Dated the ——— day of ———, 18—.

C. D.,
E. F.,
G. H., } Supervisors.

SECTION 1242. The names of persons left out of any such highway tax list, and who ought to have been included therein, and of new inhabitants, who have not in the same year been assessed in some other place for highway taxes, shall from time to time be added to the several lists, and assessed by the overseers on their polls, and in proportion to their taxable property, as others are assessed on such lists by the supervisors.

Names to be added to lists.

ors to pay taxes on the highways, subject to an appeal to the supervisors.

Part of tax expended for walks and shade trees.

SECTION 1243. Whenever any ten or more taxpayers, residing in any one road district, shall petition therefor (1), the supervisors of the town may make an order (2) directing the overseers of highways of such district to appropriate and expend that portion of the highway taxes designated in such order, not exceeding twenty-five per centum of the whole of such taxes for such district in any one year, in constructing such sidewalks, and purchasing and setting out such shade and ornamental trees, or either, in such district, as shall be designated in such order.

When supervisors may levy an additional assessment.

SECTION 1244. (As amended by ch. 215, Laws 1882.) Whenever the amount of highway tax assessed by the supervisors in any district shall be deemed insufficient to keep the roads in repair,

(1) Form of Petition under Section 1243.

To the supervisors of the town of —:

The undersigned taxpayers, residing in road district No. —, in said town of —, hereby petition that you make an order directing the overseer of highways of said district to appropriate and expend — per centum of the highway taxes of such district for the year 18—, in constructing a sidewalk (or sidewalks) upon (designate highway upon which sidewalk is desired), and in purchasing and setting out shade and (or) ornamental trees at (designate places in district) in such district.

Dated this — day of —, 18—.

(Signatures.)

(2) Form of Order on Foregoing Petition.

To A. B., overseer of highways of road district No —, in the town of —:

A petition of ten (or more) taxpayers, residing in said road district, having been duly made to us therefor: You are hereby ordered and directed to appropriate and expend — (not more than 25 per centum) of the whole highway tax of said district No. — for the year 18—, in constructing a sidewalk upon the — side of — (designate highway), from — to — (designate points between which sidewalk is to be constructed, etc.), and in purchasing and setting out in such district, shade and (or) ornamental trees, as follows: (State whether shade or ornamental trees, or both; the kind or kinds of such trees to be purchased, and the number of each, and along what highway, or at what places, etc., the same are to be set out.)

Given under our hands this — day of —, 18—.

— —, } Supervisors of
— —, } the town of
— —, }

the supervisors shall have power in their discretion, upon the written application (1) of the overseer of any district in their town, to assess an additional tax (2) upon the taxable property of such district, not to exceed seven mills to the dollar on the valuation of the same as fixed by the supervisors in the tax list for such district; and the taxes so further assessed shall be collected and expended in like manner as all highway taxes assessed by the supervisors are required to be collected and expended.

(1) Form of Application of Overseer for Additional Assessment.

To the Supervisors of the Town of —.

The undersigned overseer of road district No. — in the Town of —, respectfully represents, that the highway taxes assessed for said road district are insufficient to keep the roads therein in repair.

You are therefore requested to assess an additional tax of — dollars upon the taxable property of said district. Such taxes to be collected and expended as other highway taxes are collected and expended and for the purpose aforesaid.

Given under my hand this — day of — A. D. 18—.

Overseer of Highways,
Road Dist. No. —.

(2) Form of Order of Assessment of Additional Highway Tax by Supervisors.

Application in writing having been made to the undersigned supervisors of the Town of — by the overseer of highways of Road-district No. —, in said town, setting forth that the amount of highway tax assessed by said supervisors is insufficient to keep the roads in said district in repair; and said supervisors deeming said request reasonable and the cause sufficient, by virtue of the authority in them vested by law, hereby order and make an additional assessment upon the taxable property of said road district of — mills to the dollar on the valuation of the same as fixed by the supervisors in the tax list for such district which assessment is as follows:

NAME.	Description of land.	Section.	Town.	Range.	No. of acres.	Valuation of real property.	Valuation of personal property.	Total valuation.	Total tax.
.....	\$	\$	\$	\$
.....	\$	\$	\$	\$

Dated this — day of —, 18—.

A. B. } Supervisors of
C. D. } the Town
E. F. } of —.

THE COLLECTION AND APPLICATION OF HIGHWAY TAXES.

Town treasurers to pay overseers moneys applicable to highways, etc.

SECTION 1245 (as amended by ch. 26, Laws 1883). It shall be the duty of each town treasurer, between the fifteenth and thirtieth days of April, in each year, to notify (1) the overseer of highways of every road district in his town, which may be entitled to any moneys in the town treasury, accruing from returned highway taxes in such district, or from any balance received from the former overseer, of the amount of such moneys; and the said treasurer shall pay to the overseer of each road district, upon his order (2), with the approval

(1) *Form of Notice to Overseer of Highways under Section 1245.*

To A. B. overseer of highways of road district No. —, in the town of —:

You are hereby notified that said road district No. — is entitled to the sum of — dollars, in the treasury of said town, accruing from returned highway taxes in such district, and (or) from the balance received from the former overseer of said district.

Dated this — day of —, 18—.

— Town Treasurer.

(2) *Form of Order upon Treasurer to Pay to Overseer.*

To —, town treasurer of the town of —:

Pay to me as overseer of highways of district No. —, in said town of —, all moneys in your hands belonging to such district, for the construction and improvement of roads and bridges therein.

Dated this — day of —, 18—.

—, Overseer of Highways, District No. —.

Approval of Chairman to be indorsed thereon.

I approve the within order.

—, Chairman Town Board of Town of —.

NOTE.—In case the town board conclude to expend the returned highway taxes by contract under the foregoing provision, the following form may be used:

Whereas, the board of supervisors of the town of —, are of the opinion that the public good would be promoted by the expenditure of the returned highway taxes in the several road districts of said town by contract;

Therefore, be it resolved, That the returned highway taxes be expended by contract, for the improvement of the roads and bridges in the several road districts of said town. The

of the chairman of the town indorsed thereon, all moneys in his hands belonging to such district, for the construction and improvement of roads and bridges therein; provided, however, the board of supervisors of any town may by resolution, declare that the returned highway taxes shall be expended by contract, in the several road districts where they were levied, and may let contracts for the construction and improvement of roads and bridges in such road districts, to be paid for from the returned highway tax of such district.

SECTION 1246. Every overseer of highways shall cause at least two-thirds of the amount of highway tax assessed in his district to be collected and expended as the law requires, before the first day of July, and the residue by such time or times as the supervisors of the respective towns may designate each year; but when such tax is to be expended upon macadamized roads, the time for expending the same shall be extended to the last Monday in March.

When tax expended.

SECTION 1247. Every overseer of highways shall give at least three days' notice (1) to each person residing in his district, assessed to pay highway

Overseers to collect tax in labor, team work, etc.

42 Wis. 605.

following is the amount thereof assigned to the several road districts:

District No. 1. \$ ———.

District No. 2. \$ ———.

District No. 3. \$ ———.

Dated at ———, this ——— day of ———, A. D. 18—.

—————, } Supervisors of
—————, } the town of
—————, }

NOTE.—For contract, adopt the form given under sec 1225. Town officers in drawing contracts should not blindly follow forms which they do not understand; they should seek to express fully and plainly, in common language, the exact terms of their agreement, using no words or terms which they do not fully understand.

(1) *Form of Notice to Work on Highway.*

To ———, residing in road-district No. ———, in the town of ———, ——— county, Wisconsin:

I hereby notify you that you may appear on the highway leading from ——— to ——— near (some house or bridge), on the ——— day of ———, 18—, at ——— o'clock A. M., and pay your highway tax for the year 18—, in labor. You are required to appear with (here state what teams and implements). Your assessment is the sum of ——— dollars.

Dated this ——— day of ———, 18—.

Overseer of Highways of District No. ———, Town of ———.

taxes therein, either personal or in writing, left at his usual place of abode, of the time when and place where he may appear and pay his highway taxes in labor, and with what implements (a); and he may require of all persons offering to pay their taxes in labor, to furnish a spade, shovel, axe or hoe; and if any such person be the owner of a team, plow, wagon, cart, or other implement useful for working the highways, he may require such person to furnish any of them, if his highway taxes be not less than three dollars.

Tax may be paid in labor.

SECTION 1248. Every person assessed to pay highway taxes may appear at the time and place, and with such implements and teams as the overseer of highways in his notice shall have required, and work, in person or by an able-bodied substitute; and every such person who shall so appear and work agreeably to the directions of such overseer, upon the highways in his district, shall be credited on his highway tax one dollar and fifty cents for every day he shall actually work eight hours, and fifty cents a day for every wagon or plow, and one dollar a day for each yoke of oxen, and one dollar and fifty cents a day for each span of horses he shall furnish agreeably to the requirements of said overseer.

Snow blockades, how removed.

34 Wis. 590.

SECTION 1249. Every overseer of highways shall, whenever any part of the public highways in his district is blocked up by snow-drifts so as to render the same impassable, call out upon one day's notice the taxpayers of his district, and immediately put such part of said highways in passable order (b); and every person who shall appear upon such notice, with such tools as the overseer shall direct, and work agreeably to his direction, shall be credited on the highway tax list, then in the hands of such overseer, the amount of such labor or any part thereof, if the person performing such labor shall not have previously paid the full amount of tax assessed to him on such list, not exceeding the amount he may then

Compensation for.

(a) Where the notice to appear and work out highway taxes required by section 1247 has not been given, the overseer has no right to return them as unpaid; nor the town clerk any right or power to enter them as delinquent on the assessment roll. [*Biss v. The Town of New Haven*, 42 Wis. 606.]

(b) The overseer is chargeable with notice that the effect of a snow storm, accompanied by a violent wind, is to produce drifts in the highways, and it is his manifest duty to ascertain where the highways in his district are obstructed by snow, and to take steps to remove the drifts. [*McCabe v. The Town of Hammond*, 34 Wis. 590.]

be delinquent on such list; and if any highway tax of any person performing such service shall have been returned delinquent, such overseer shall give to such person a certificate (1) that he is entitled to a credit on such returned delinquent tax, stating therein the amount of such credit, and the town treasurer shall receive such certificate for the amount therein stated in payment upon such delinquent tax. But whenever the overseer shall deem it impracticable to render such parts of such highways passable and keep them in such condition, it shall be lawful for him to open a track through any field or enclosure in his district for the temporary accommodation of travel, whenever the same may be done without material damage to the owner or owners of such enclosures, and no person using such track shall be liable therefor in any or civil criminal action.

Track through fields.

SECTION 1250. For the purpose of performing the duty required by the preceding section, the overseer of highways may, if necessary, levy and assess a highway tax, not exceeding one-fourth the amount assessed by the supervisors, on the taxable property on his highway tax list for the current year; and such tax shall be collected in the same way and manner as other highway taxes are collected, except that the notice for paying the same in labor may be one day.

Overseer may assess tax for purposes of preceding section.

SECTION 1251. If any person assessed for highway taxes shall neglect to appear and work on the highway at the time and place specified in the notice required to be given by the overseer, unless satisfactory cause shall appear to such overseer for such neglect, he shall not thereafter be entitled to pay his highway tax assessed for that

Persons neglecting to work to pay cash.

(1) *Form of Overseer's Certificate of Credit.*

I, A. B., overseer of highways of road district No. —, in the town of —, do hereby certify that C. D. did, on the — day of —, 18—, upon notice duly given by me, appear with such tools as I directed, and did work agreeably to my direction in rendering passable the public highway (*designate highway or highways*), the same being at the time so blocked up by snow drifts as to render the same impassable, and that for such work and service the said C. D. is entitled to a credit of — dollars on the returned delinquent highway tax in the hands of the treasurer of said town.

Dated this — day of —, 18—.

Overseer of Highways of Road District No. —.

year, or any part thereof, in labor, but shall be thereafter liable to pay the same in money.

How tax payable in money collected.

SECTION 1252. (As amended by Ch. 251, L. 1881). Whenever any person shall become liable to pay his highway tax in money, the overseer of highways shall collect the same, and for that purpose shall call at least once on the person taxed, or at the place of his residence, if in such district or town, and demand payment thereof, and in case such person shall neglect or refuse to pay such tax, such overseer shall levy the same by distress and sale of the goods and chattels of the person who ought to pay the same; he shall give public notice (1) of the time and place of such sale, and of the property to be sold, at least six days previous to the time of sale, by a notice thereof to be posted up in at least three public places in the district or town where such sale shall be made; and at the time and place fixed in such notice, he shall sell the same, at public auction, to the highest bidder; and if the property so levied upon shall be sold for more than the amount of such tax and costs of collection, he shall return the surplus to the person from whom the property was taken. And in case any person shall become liable to pay his poll tax in money, and shall neglect or refuse to pay the same after due demand therefor, as hereinbefore provided, for the period of ten days, and the overseer of highways be unable to find goods and chattels of such person sufficient to make the amount thereof by distress and sale, as hereinbefore provided, such overseer may, in the name of the town, sue for

(1) *Form of Notice of Sale of Property for Nonpayment of Highway Taxes.*

NOTICE.

Public notice is hereby given that I, the overseer of District No. —, of the town of —, will sell at public auction on the — day of —, A. D 18—, at — o'clock in the — noon of said day, at the house of —, in said town, the following described property, viz.: (*here describe property*), which I have levied by distress of the goods and chattels of —, who has neglected and refused to pay the highway tax charged against him in said district, payment thereof having been duly demanded by me, to satisfy the amount of such tax and costs.

Dated this — day of —, 18—.

Overseer of Highways, District No. —, Town of —.

and collect such tax with fifty per centum damages on the same with costs of suit, before any justice of the peace in said town; and the first process in such actions shall be a civil warrant, but before any such warrant shall be issued, the overseer of highways of the road district in which such poll tax shall be due, shall make and file with the justice an affidavit substantially in the following form:

State of Wisconsin, } ss.
 ——— county. }

—, overseer of highways of road district number —, of the town of —, in said county, being duly sworn, on oath says that — was assessed by the supervisors of said town to pay a poll tax for the year 18— in said road district of —, and that his name appears upon the list of highway taxes assessed by said supervisors for said year, as a person liable to pay a poll tax in said road district; that such list, with the warrant required by law thereto annexed, was delivered to this affiant on the — day of —, 18—; that said poll tax has become payable in money; that demand of payment of said poll tax was duly made of the said — by this affiant on the — day of —, 18—; and that more than ten days have since elapsed, but that the said — has neglected (or refused, as the case may be) to pay the said poll tax, and that this affiant is unable to find goods and chattels of the said — sufficient to make the amount thereof by distress and sale, as provided by law, and therefore prays that a warrant may be issued and the said — arrested and dealt with according to law.

Overseer's affidavit.

Subscribed and sworn to before me this — day of —, 18—.

And in default of payment of the judgment in such action, execution shall issue against the body of the defendant as in cases of tort.

Issue of execution in case of default of payment.

SECTION 1253. It shall be lawful for any overseer of highways, for the purpose of collecting any unpaid highway taxes on his tax list, against any person or persons who shall have become liable to pay the same in money, to place such tax list in the hands of any constable of the same town, and such constable shall possess the same powers in the collection of such tax, and be en-

Constable may collect tax.

titled to receive the like compensation as overseers of highways in like cases.

List, etc furnished constable.

SECTION 1254. Whenever any overseer of highways shall so place his tax list in the hands of a constable for collection, he shall designate the persons named therein from whom taxes are due in money, and indorse over his signature on such tax list, in substance as follows:

Indorsement of authority to collect.

I hereby authorize A. B. [naming the constable] to collect the unpaid taxes due in money on the within tax list.

Duty of constable.

Dated ———, 18—.

C. D., *Overseer*.

SECTION 1255. Every constable who shall receive any such tax list to be collected shall, to the best of his ability, collect the sums due in money on such tax list from the persons who ought to pay the same; and shall, within thirty days from the date of such indorsement on said tax list, return to the said overseer his doings thereon, and pay over all moneys so collected to such overseer; and any overseer, if he shall deem it necessary, may once re-issue such warrant and tax list in the manner specified in the preceding section, and when so re-issued, the constable shall proceed thereon as herein above provided.

Money collected, how expended.

SECTION 1256. All moneys collected or received by any overseer of highways on account of highway taxes in his district shall be faithfully applied and expended by such overseer in the procuring of labor and in the purchase of implements and materials, as, in the opinion of said overseer, will most benefit the highways and bridges in his district.

Fees of overseers.

SECTION 1257. Every overseer shall be entitled to retain five per cent. for his fees out of all moneys collected by him on his warrant, and in case of a levy and sale by him of goods and chattels for the payment of any tax, he shall be entitled to collect and receive for the same such fees as constables are authorized to receive for levying upon and selling goods under execution.

Compensation of overseers.

SECTION 1258. If any overseer shall be employed more time in executing the several duties enjoined upon him than shall be necessary for the payment of his highway taxes, he shall be paid for the excess at the rate of one dollar and fifty cents per day, and be allowed to retain the same out of the money that may come into his hands

on account of highway tax; but he shall not be allowed to pay his own tax in money. In estimating the time employed, he shall not include the time spent by him in collecting such highway tax in money, nor shall such overseer have any claim against the town for any such labor or services.

Time, how estimated.

SECTION 1259. Every overseer of highways shall, on or before the first Monday in November of each year, make out and deliver to the town clerk a statement (1) in writing, containing a description of all the real estate taxed in his tax list upon which the taxes remain unpaid, together with the amount of tax assessed to each such description of land, and the names of the owners thereof, if known, and he shall make and subscribe an affidavit thereon, that the taxes mentioned in said statement remain unpaid. If the said overseer shall neglect or refuse to make out and deliver to the town clerk such statement, as aforesaid, the supervisors or a majority of them shall, upon the application of the town clerk, is-

Overseers to make return of unpaid taxes.

Penalty and proceedings, when overseer neglects duty, etc.

(1) *Form of Overseer's Return to Town Clerk of Unpaid Highway Taxes.*

To the Town Clerk of the Town of ———.

The following is a statement containing a description of all the real estate taxed on my tax list, as overseer of highways for road district No. —, in the town of —, county of —, for the year 18—, upon which the taxes remain unpaid, together with the amount of tax assessed to each such description of land, and the names of the owners thereof as far as known:

Names of Owners.	Description of real estate.	Tax assessed.	Tax unpaid.
John Doe.....	N. E. $\frac{1}{4}$ of Sec. 10.....	\$4 00	\$4 00
Unknown	S. W. $\frac{1}{4}$ of Sec. 12.....	8 75	8 75

A. B., Overseer.

Form of Affidavit thereon.

STATE OF WISCONSIN, } ss.
County of —, }

A. B., overseer of highways, being duly sworn, says that the taxes mentioned in the foregoing statement by him subscribed remain unpaid.

A. B.

Subscribed and sworn to before me, this — day of —, 18—.

C. D., Justice of the Peace.

sue a warrant (2) under their hands to any constable of the town, commanding him forthwith to bring such overseer before them, to show cause why such statement has not been made, as the law requires. The constable's fees for such service shall be paid by such delinquent overseer, and when brought before said supervisors, he shall forthwith make the return and verify the same, in manner as above provided, or show cause why he should not; and if he shall fail or refuse to do either, the supervisors shall make a certificate (1) of the fact of such failure or refusal, and file

(2) *Form of Warrant by Supervisors Against Overseer for Neglect to Make Statement.*

COUNTY OF —, }
Town of —, } ss.

To any constable of said town greeting:

Whereas, upon application of —, town clerk of said town, it appears that —, overseer of highways for district No. —, in said town, has neglected (or refused) to make out and deliver to said town clerk a statement in writing, as required by law, for the year 18—, containing a description of all the real estate taxed in his tax list, upon which the taxes remain unpaid, together with the amount of tax assessed to each such description of land, and the names of the owners thereof, if known:

Now, therefore, we, the supervisors of said town, do hereby command you forthwith to bring said — before us, to show cause why such statement has not been made as the law requires.

Given under our hands this — day of —, 18—.

—, }
—, } Supervisors.
—, }

(1) *Form of Supervisor's Certificate under section 1259.*

COUNTY OF —, }
Town of —, } ss.

A warrant having been by us duly issued on the — day of —, 18—, directed 'To any constable of the town of —,' commanding him forthwith to bring —, overseer of highways in road district No. —, in said town, before us to show cause why he has neglected (or, refused) to make out and deliver to the town clerk of said town, a statement in writing as required by law, for the year 18—, containing a description of all the real estate taxed in his tax list, upon which the taxes remain unpaid, together with the amount of tax assessed to each such description of land, and the names of the owners thereof, if known; and the said —, overseer, as aforesaid, having been brought before us as commanded by said warrant, we do hereby certify that —, said overseer has failed (or, refused) either to make such statement or return, and verify the same, as required by law, or to show cause why he should not.

Given under our hands this — day of —, 18—,

—, }
—, } Supervisors.
—, }

the same with the town clerk; and for every such refusal or failure such overseer shall forfeit not less than twenty-five nor more than one hundred dollars.

SECTION 1260. The town clerk shall, in making out the tax roll of the town, next thereafter, enter such unpaid taxes therein, opposite to the description of the land upon which the taxes so remain unpaid, and such taxes shall be collected in the same manner as town taxes are collected, and when so collected, shall be paid over as hereinbefore provided, for the use of the district in which they were originally assessed.

Town clerks to enter unpaid taxes in next tax roll, etc.

SECTION 1261. Every overseer of highways shall, on or before the third Monday in March in each year, render to the supervisors of the town an account (2), in writing, verified by his affidavit subscribed thereon, containing:

Accounts of overseers, what to contain.

(2) *Form of Annual Account of Overseer of Highways.*

To the Supervisors of the Town of _____:

The annual account of _____, overseer of highways for road district No. _____, in the town of _____, and county of _____, rendered to the supervisors of said town:

Names of persons assessed to pay highway taxes.	Amount of tax collected.	How PAID.	
		Cash.	Labor.
C. D.	\$1 00	.....	.....
E. F.	7 00	.....	.....
Other sources, specifying same. ....	.....	.....	.....

The amount of money received from the town treasurer on account of returned taxes on real estate, is. \$70 00
 The amount received on account of money paid into town treasury by former overseer of said district, is. 60 00

The manner in which taxes collected and received have been disbursed, is as follows (*here set forth the manner and particular items of such disbursement*).

The following is a statement of the highway taxes assessed upon real estate in said district which remains unpaid; the amount unpaid; being set opposite to each tract:

On N. E. $\frac{1}{4}$ of sec. 1.	\$5 00
On N. W. $\frac{1}{4}$ of sec. 1.	6 75
On S. W. $\frac{1}{4}$ of sec. 1.	7 25
Total amount unpaid.	

The names of the persons to whom, and the amount of each

1. The names of all persons assessed to pay a highway tax in his district.

2. The amount of tax collected from each such person, and from other sources, distinguishing the taxes which have been paid in labor from those which have been paid in money.

3. The amount of money received from the town treasurer on account of returned taxes or real estate, or paid into the town treasury by a former overseer in such district.

4. The manner in which all taxes collected and received by him have been disbursed by him, and the particular items of such disbursement.

5. A statement of the highway taxes assessed upon real estate in his district, which remain unpaid.

6. The names of the persons to whom and the amount of each certificate given for highway labor, under the provision of section twelve hundred and forty-nine.

certificate given for highway labor, under the provisions of section 1249, are as follows:

Names.	Amount of certificate.
.....
.....
.....
Total.....

Highway taxes on tax list remaining unpaid, except such as have been returned previously as delinquent, are as follows:

Names.	Description of lands.	Amount unpaid.
.....
.....
.....
Total

Dated this — day of —, 18—.

A. B., Overseer.

Form of Affidavit of Overseer, Verifying Foregoing Account.

STATE OF WISCONSIN, } ss.
County of —, }

A. B., being duly sworn, says that the foregoing account and statement by him subscribed is true.

A. B.

Subscribed and sworn to before me, this — day of —, 18—.

C. D., Justice of the Peace.

7. If any highway taxes on his tax list shall remain unpaid, except such as have been returned previously as required by law he shall make return of the taxes so remaining unpaid, giving the names of the persons, description of lands, and the several amounts of taxes so unpaid, and the supervisors shall add such unpaid amounts to the amounts assessed on the highway tax list, for the succeeding year against the person and tracts of land upon which such taxes remain unpaid, and the same shall be collected with the other highway taxes on such list and expended as required by law. The accounts so rendered shall be publicly read by the chairman of the town board or town clerk at the next annual town meeting.

Unpaid taxes not before returned, how collected.

SECTION 1262. If upon rendering such account, any moneys shall remain unexpended in the hands of such overseer, he shall immediately pay over the same to the town treasurer; and if he shall neglect or refuse so to do, the town treasurer shall forthwith sue for and collect the same in the name of the town, to be applied when collected, as provided in section twelve hundred and forty-five.

Overseer to pay over moneys on hand on rendering accounts.

HIGHWAYS, HOW LAID OUT, OPENED, ALTERED AND DISCONTINUED.

SECTION 1263. No public highway shall be laid out through or upon any orchard or garden, or any building or fixture, used for the purpose of trade or manufacture, when the damage caused thereby to such orchard, garden, building or fixture, exclusive to the damage to the land, shall exceed seventy-five dollars; or through or upon any building, fixture, yard or enclosure, used for educational or charitable purposes; or through or upon any other building or fixture; or through or upon the yard or enclosure, necessary to the use or enjoyment thereof, without the consent of the owner; or through any cemetery, without the consent of the trustees or other officer having the control and management thereof (a).

Highways: where not to be laid.

19 Wis. 240.
24 Wis. 572.

SECTION 1264. Public highways laid out under the provisions of this chapter shall not be less than four rods wide; but town supervisors shall

Width of.

(a) Penalty for making highway through cemetery. [Section 4593, R. S.]

have power to lay out such highways of the width of three rods, when, in their opinion, a highway of greater width is not needed.

How laid out,
altered, etc.

2 Wis. 129.
6 Wis. 184.
18 Wis. 537.
29 Wis. 479.
27 Wis. 469.
32 Wis. 663.

SECTION 1265. When any six or more freeholders or applicants for a homestead, under the laws of the United States, occupying the same, residing in any town, shall wish to have a highway laid out, widened, altered or discontinued in such town, they may make application (1), in writing, to the supervisors of the town in which they reside, for that purpose (a); and the said supervisors shall proceed to lay out, widen, alter or discontinue such highway, if in their opinion the public good will thereby be promoted; but they shall have no power to alter or discontinue any state road, or any highway laid out by the county board.

When supervisor
not to act.

SECTION 1266. No supervisor shall act in laying out, altering, widening or discontinuing any highway in which he may be personally interested.

(1) *Form of Application under Section 1265.*

To the supervisors of the town of —, in — county:

We, the undersigned freeholders (and if such be the fact, applicants for homesteads under the laws of the United States, occupying the same); residing in said town of —, do hereby make application to you to lay out (widen, alter or discontinue a highway in said town as follows: (Give route, stating points of commencement and termination, and tracts of land through which the highway may pass, and the direction, etc.)

Dated at —, this — day of —, 18—.

Signatures.

NOTE.—If the application be to alter a highway, describe the highway as recorded, if possible, otherwise as particularly as may be, and specify accurately the desired alteration, giving the tracts of land over which the existing road passes, as well as the tracts over which the changed or altered road may pass.

If the application be to discontinue a highway, describe the highway as it is recorded, if possible, otherwise as particularly as may be, giving the tracts of land over which the same passes.

If the application be to widen a highway, describe the highway as it is recorded, if possible, otherwise as fully and particular as may be, stating the tracts of land over which the same passes, and giving its present width, and its desired width, and state whether it is desired to widen by adding to both sides, or only to one (if the latter, to which side), and whether it is proposed to widen for its entire length, or at points only (if the latter, designating the points at which it is desired to widen.)

(a) A resident freeholder of a town must be, 1st, a resident of that town; and 2d, he must own a freehold interest in lands situated therein. [Damp v. The Town of Dane, 29 Wis. 419. *Supervisors v. Nelson*, 57 Wis. 147.]

A "freehold" is "an estate of inheritance or for life" [Section 2029, R. S.] The application is the foundation of the proceedings; it is jurisdictional, and unless made and signed in strict conformity to the requirements of the statute, the supervisors have no authority to act. [Richland v. Supervisors, 55, 664.]

SECTION 1267. Upon application made to the supervisors for the laying out, widening altering, or discontinuing any highway, they shall make out a notice (1), and fix therein a time and place, at which they will meet and decide (b) upon such application; and the applicants shall, at least five days previous to such time, cause such notice to be given to all the occupants of the lands through which such highway may pass, which notice shall be served personally, or by copy left with or at the usual place of abode of each occupant of such lands; and such notice shall also be posted up in three public places in said town, at least ten days before the time of such meeting of the supervisors; every such notice shall specify, as near as practicable, the highway proposed to be laid out, widened, altered or discontinued, and the several tracts of land through which the same may pass (a).

Notice of time
and place of
hearing.

6 Wis. 184.
7 Wis. 124.
29 Wis. 68.

Notice to oc-
cupant, how
served.

44 Wis. 670.
49 Wis. 284.
55 Wis. 664.
56 Wis. 685.
57 Wis. 148.

(1) *Form of Notice of Meeting of Supervisors to Decide upon Application.*

Application having been on the _____ day of _____, 18— duly made to the undersigned supervisors of the town of _____ in the county of _____, by six freeholders (or, if such be the fact, by six applicants for homesteads under the laws of the United States, occupying the same, (or) by (three) freeholders and (three) applicants for homesteads, etc.), residing in said town, for a highway to be laid out (widened, altered or discontinued) as follows: (*Here describe, as set forth in the petition, the highway to be laid out, widened altered or discontinued, and the tracts of land over which the same passes or may pass.*)

Notice is therefore hereby given that we, the undersigned supervisors of said town, will meet on the _____ day of _____, 18—, at _____ o'clock in the _____ noon of that day, at the house of _____, in said town, and decide upon such application.

Dated this _____ day of _____, 18—.

_____, }
_____, } Supervisors.
_____, }

(b) A notice to meet and take into consideration not a compliance with the statutes. [*State v. Castle*, 44 Wis. 670.] Must meet and decide.

(a) Notice by supervisors stating a time and place where they would "meet to make an examination and survey" of a proposed highway, or that they would meet "to take into consideration the petition for laying out, etc.", is not a compliance with the statute. Notice must be given of a time and place at which they will meet "and decide upon such application." [*Austin v. Allen*, 6 Wis. 184; *Babb v. Carver*, 7 Wis. 124.]

The acts of town officers in establishing highways under the statute, are quasi judicial, and as the most sacred rights of the public and of individuals are frequently involved therein, the provisions of the statute must be pursued with reasonable strictness. [*Austin v. Allen*, *supra*.]

Proper notice must be served upon all occupants of the lands through which the highway is to be laid. [*Id.*]

The omission to give the notice prescribed by section 1267 is fatal to the

How supervisors to proceed after notice.

55 Wis. 670.
57 Wis. 143.

SECTION 1268. The supervisors, upon being satisfied that the notices required in the preceding section have been duly given, proof of which may be shown by affidavit (1) or otherwise, as they may require, shall proceed to examine personally such highway, and shall hear any reason that may be offered for or against laying out, widening, altering or discontinuing the same, and shall decide upon the application as they shall deem proper (a); and they may adjourn from time to

regularity of the proceedings in laying out a highway. [*State v. Langer*, 29 Wis. 68.]

The occupant may waive such notice by express consent to the laying out of the highway, or by accepting the damages awarded him. [*Id.* 68.]

A person across whose land a highway is laid out, is not estopped from disputing its validity by reason of having been present when it was laid out, taking no part in the proceedings and failing to make any objection to it being laid out and established. [*Roehrborn v. Schmidt*, 16 Wis. 519.]

But where defective proceedings are resorted to, for the purpose of laying out a highway, and the land owner accepts the damages awarded, he is estopped from contesting the validity of the highway, and the act may be regarded as a dedication of the land over which the highway was laid, to the public use. [*Karter v. Nellis*, 22 Wis. 215.]

(a) The supervisors in altering a highway are not necessarily confined to the particular line named in the application. They should exercise a reasonable discretion upon the subject, and if satisfied that the public interest requires a variation from the proposed line, they should make it.

"Of course they should adopt the proposed route as far as practicable." [*Neis v. Franzen*, 18 Wis. 537.]

NOTE.—In all cases when it can be given the better and safer practice is to give personal notice to each of the parties interested. This is done by delivering to and leaving with such persons a true copy in plain writing of the notice of the meeting of the board of supervisors. In case the notice cannot be given personally leave the same at the last and usual residence of the person to be served with his wife or some other member of his family of suitable age and discretion explaining to such person the contents of the paper served and the reason of such service. All the papers made except copies served must be filed and carefully preserved in the office of the town clerk.

(1) Form of Affidavit of Serving and Posting Foregoing Notice.

STATE OF WISCONSIN, }
County of _____, } ss.

_____, being first duly sworn on oath, say that on the _____ day of _____, 18—, he did personally serve the (within, or foregoing or annexed) notice upon A. B., the occupant of (describe the land occupied by A. B.), and C. D., the occupant of (describe land occupied by C. D.), being lands through which the highway mentioned in said notice may pass. That he did, on the same day, serve said notice on E. F., the occupant of _____, through which said highway may pass, by leaving a copy thereof at his usual place of abode in said town. That he did, also, on the same day, post up said notice as follows (state places where posted), being three public places in said town.

Sworn to and subscribed before me, this _____ day of _____, 18—.

Justice of the Peace.

NOTE.—If service on all occupants was personal, the clause as to service by leaving at place of abode should be omitted.

As the validity of the proceedings depends upon the proper service of the notice, care should be taken that service is properly made, and proof thereof duly filed with the other papers in the town clerk's office.

time, not exceeding in all thirty days from the time of the first meeting, giving public notice (1) of the time and place of such adjournment when made, and by forthwith filing notice of such adjournment in the office of the town clerk.

SECTION 1269. Whenever the supervisors shall lay out, alter, widen, or discontinue any highway, they shall make and sign an order (2) therefor, in-

Order to lay out, survey and award of damages when filed.

(1) *Form of Notice of Adjournment of Meeting, to be Filed in the Office of the Town Clerk.*

27 Wis. 469.
39 Wis. 584.
55 Wis. 670.
57 Wis. 148.

The undersigned, supervisors of the town of —, in the county of —, having this day met at the time and place fixed by us in the notice for such meeting, to decide upon an application of A. B. and others, dated on the — day of —, 18—, to lay out (*widen, alter or discontinue*) a highway in said town, described in said application, do hereby give notice that said meeting is adjourned to the — day of —, 18—, at — o'clock in the — noon, at — (*designate place*), when and where we will meet and decide upon such application.

Dated this — day of —, 18—.

—, }
—, } *Supervisors.*
—, }

(2) *Form of Order Laying Out, Widening, Altering or Discontinuing Highways.*

COUNTY OF —, }
Town of —, } ss.

Whereas, upon the application of six (or more) freeholders (or, if six) (or more) applicants for homesteads, under the laws of the United States, occupying the same, or of — freeholders and — applicants for homesteads, etc., residing in said town of —, for the laying out (*widening, altering or discontinuing*) of a highway, which said proposed highway (or *widening, alteration or discontinuance, etc.*) is set forth and described in said application, as follows: Beginning at, etc., (*describe as in application*)

We, the undersigned, supervisors of said town, did on the — day of —, 18—, make out a notice, and fix therein a time and place at which we would meet and decide upon such application, and did meet on the — day of — 18—, at — o'clock in the — noon of said day, at (*here state place of meeting as in notice*), it being the time and place fixed by us in said notice; and having first been satisfied by due proof that the notice aforesaid had been duly given five days previous to the time of our said meeting, to all the occupants of the lands through which such highway may pass, by serving each of them personally with such notice, or by copy thereof left with or at the usual place of abode of each occupant of said lands, and had also been posted up in three public places in said town ten days before the time of our said meeting, in the manner required by law; we did then and there proceed to examine personally said highway, and did hear any and all reasons that were offered for or against laying out (*widening, altering or discontinuing*) the same and (*if any adjournment is made, say*: the said meeting having been duly

When sup-
plication deemed
denied.

corporating therein a description of the highway so laid out, altered, widened or discontinued, and shall cause an accurate survey thereof to be made, when necessary; and such order shall be filed and recorded in the office of the town clerk, who shall note the time of recording the same in the record (a). Such order, together with the award of damages, hereinafter mentioned, shall be so filed within ten days after the day fixed by their notice or adjournment for deciding upon such application (b); and in case said supervisors shall fail to file such order and award within the ten days aforesaid, they shall be deemed to have decided against such application (c).

adjourned by us to the ——— day of ———, 18—, at ——— o'clock in the ——— noon, at ——— (*designate place*), of the time and place of which adjournment, when made, public notice was duly given by us, and notice thereof was forthwith filed in the office of the town clerk of said town, the undersigned did again meet, at the adjourned time and place aforesaid, and having made further examination in the premises, and heard any further reasons that were offered for or against said application) did decide upon such application; and it being our opinion that the public good will thereby be promoted, did decide to lay out (*widen, alter or discontinue*) such highway as hereinafter described.

Now, therefore, pursuant to said application, we, the said supervisors, do hereby order and determine *that a highway be and the same is hereby laid out in said town, as follows, to wit: (*here incorporate survey*), the same being an accurate survey of said highway caused by us to be made. The line of said survey is the center of said highway, and the same is laid out of the width of ——— rods.

*(*In case of alteration, say*), that said highway be and the same is hereby altered as follows, to wit: (*State alteration and incorporate survey*).

*(*In case of discontinuance, say*), that said highway, described as follows, to wit: (*incorporate survey*) be and the same is hereby discontinued.

*(*In case of widening, say*), that said highway be and the same is hereby widened as follows, to wit: (*State how widened, and incorporate survey*).

Given under our hands this ——— day of ———, 18—.

_____,
_____, } Supervisors.
_____, }

(a) An order of town supervisors purporting to lay out a highway, is void when it does not intelligibly describe the line thereof, nor refer definitely to any proper instrument on file in the town clerk's office, containing such description. [*Isam v. Smith*, 21 Wis. 32.]

An order laying out a highway, and failing to locate and describe the same with sufficient certainty, is void. [*Mott v. Benckler*, 30 Wis. 531.]

(b) It is indispensable to the validity of proceedings to lay out, alter or widen a highway, that an award of damages be made to all the owners through whose land it passes, who have not released the same, and the order laying out, etc., the highway, and the award of damages, must be filed in the town clerk's office within the ten days prescribed by section 1269. See *Dolphin v. Pedley*, 27 Wis. 469.]

(c) Under sections 1267 to 1269 R. F., the decision in a proceeding

SECTION 1270. The damages sustained by any person through whose land any highway shall be laid out, widened or altered, may be ascertained by (1) agreement between the supervisors and such owner; every such agreement shall be reduced to writing and signed by such owner and the supervisors, and filed in the town clerk's office; and every such agreement, and every release (2) of damages given, shall forever preclude

Damages, how ascertained.

8 Wis. 381.
8 Wis. 714.
24 Wis. 588.
31 Wis. 27.

to lay out a highway must be made and filed within ten days after the date of the last adjournment of the hearing, and no adjournment can be had for a longer period than thirty days after the time of hearing originally fixed. A compliance with these requirements cannot be waived. [State v. Castle, 44 Wis. 670. *Ruhland v. Supervisors*, 55 Wis. 634.]

(1) Form of Agreement as to Amount of Damages.

Whereas, upon application therefor duly made, the supervisors of the town of —, have duly decided to lay out (or, widen or, alter) a highway in said town (*describe highway accurately, according to survey*), which said highway so to be laid out (widened, or, altered), will pass through the following described lands owned by A. B., a party hereto, to wit: (*describe land*). Now it is hereby agreed between the said supervisors and the said A. B., that the compensation which he, the said A. B., ought to and shall receive for the damages sustained, or to be sustained by him, by reason of the laying out (widening, or, altering) of such highway, is hereby ascertained and fixed at the sum of — dollars, which sum the said A. B. hereby agrees to accept as full compensation for such damages.

In witness whereof, the said supervisors and the said A. B. have hereunto set their hands this — day of —, 18—.

—, }
—, } *Supervisors.*
—, }

—, }
Owner (or Occupant.)

(2) Form of Release by Owner of Land.

Whereas, upon application duly made therefor, the supervisors of the town of — have duly decided to lay out (widen or alter) a highway in said town (*describe highway accurately, according to survey*), which said highway passes (or will pass) through the following described lands, of which I am owner, to wit: (*describe land*).

Now, therefore, know all men by these presents, that I, — (*owner's name*), for a valuable consideration by me received, have released and do hereby release to said town, all claim for damages sustained or to be sustained, by me by reason of the laying out (widening, or, altering) of said highway through my said lands.

In witness whereof, I have hereunto set my hand and seal this — day of —, 18—.

Signed, sealed and delivered in presence of:

— — [SEAL.]

such owner, and all persons claiming under him, from all further claim for damages. If there be any owner, other than this state or the United States, of lands through which any highway shall be laid out, widened or altered, who shall not agree with the supervisors as to the compensation he shall receive for the damages sustained by him by reason of the laying out, widening or altering of such highway, and who shall not, previously to the making of the order laying out, widening or altering such highway, deliver to said supervisors a written release of all claims for such damages, said supervisors shall, at the time of making such order, assess the damages which such owner will sustain by reason of the laying out, widening or altering such highway through his lands, and make an award in (1) writing, specifying therein the sum awarded by them to each of said owners, for their respective damages; and if the owner of any parcel of land through which such highway shall be laid out, widened or altered, is unknown, the supervisors shall, in their award of damages, specify the amount of damages awarded by them to the unknown owner of

To unknown owners, how specified.

(1) *Form of Award of Damages on Laying Out, etc., a Highway.*

COUNTY OF ———, } ss.
Town of ———, }

We, the undersigned, supervisors of the town of ———, in the county of ———, having by an order bearing date the ——— day of ———, 18—, upon due application for that purpose, laid out (widened, or altered) a highway, as follows: (*here insert accurate description of the highway*) and the following named owners of lands through which said highway is laid out, etc., not having released all claim to damages, sustained by reason of the laying out (widening, or altering) of said highway, and the undersigned not being able to agree with them as to the amount of such damages, having applied to them for that purpose, and endeavored to make such agreement, we, the said supervisors, did at the time of making said order, assess the damages which such owners will severally sustain by reason of the laying out, etc., of such highway through their lands, and having taken into consideration the benefits which each owner aforesaid may receive thereby, we award such damages as follows, to wit:

To A. B., on (*describe lands*), we have assessed and hereby award the sum of ——— dollars as such damages.

To C. D., on (*describe lands*), and so on.

The owner of the following described parcel of land, viz.: (*describe land*), being unknown to us, we award to such unknown owner as such damages the sum of ——— dollars.

Made and signed this ——— day of ———, A. D. 18—.

_____, }
_____, } *Supervisors.*
_____, }

such parcel of land, giving a brief description of such parcel of land in their award; said award shall be signed by said supervisors, and filed in the office of the town clerk, with the order laying out, widening or altering such highway (a).

SECTION 1271. If any highway shall at the same time be discontinued and set to a tract of land through which, or any part thereof, a new or altered highway shall be laid out, the same may be taken into consideration in estimating the damages sustained by the owner thereof in laying out such new or altered highway; and in estimating the damages sustained by any person in laying out, altering or widening any highway, the benefits which such person may receive thereby shall be taken into consideration.

Rule in estimating damages.

SECTION 1272. Whenever it shall be deemed necessary to lay out, alter, widen or discontinue a highway upon the line between two towns, it shall be done by the supervisors of each of said towns acting together, either upon said line, or as near thereto as the situation of the ground will admit, and they may vary the same, either on one side or the other of such line, as they may deemed necessary.

Highways on town lines, how laid.

18 Wis. 537.
34 Wis. 388.
35 Wis. 313.

SECTION 1273. (As amended by ch. 336, Laws 1883.) The application (1) therefor shall be, in du-

Applications for; proceedings on.

(a) Land which is taken and used for a public highway, is taken for public use within the meaning of the constitution, and the owner is entitled to just compensation therefor, even though the land is wild, uncultivated and uninclosed. [Norton v. Peck, 3 Wis. 714]

18 Wis. 537.
34 Wis. 388.
35 Wis. 313.

(1) *Form of Application under Section 1273.*

To the supervisors of the towns of — and —, in the county of —:

We, the undersigned freeholders (and if such be the fact, applicants for and occupiers of homesteads under the laws of the United States), residing in said towns of — and —, as stated opposite our respective names hereunder, do hereby make application to you to lay out (widen, alter or discontinue) a highway, upon the line between said towns of — and —, or as near thereto as the situation of the ground will admit, as follows, to wit: (Give route, stating points of commencement and termination, and tracts through which highway may pass, and the general direction, etc.)

Dated this — day of —, 18—.

Names of applicants.		Residence of applicants.	
A. B.	.....	Town of	.....
C. D.	.....	Town of	.....

NOTE.—The number of applicants should be six or more to each town. Notice by supervisors may be adapted from form of notice under section

PLICATE, addressed to the supervisors of both towns, and be signed by at least six freeholders or applicants for and occupiers of a homestead, residing in each town; the notice of the time and place for meeting to decide upon such application shall be signed by a majority of the supervisors of each town, and posted in each of said towns; a majority of the supervisors of each town shall meet to decide upon such application and sign the order (1) and the award

1267, and must be signed by a majority at least of the supervisors of each town.

Affidavit of service of notice should follow the form under section 1268.

The application must be made and signed in duplicate.

If the road proposed is on a town line between towns in different counties, the above form of application will be modified accordingly.

(1) *Form of Order under Section 1278.*

COUNTY OF _____, } ss.
 Town of _____, }

Whereas, upon the application of six (or more) freeholders (or, if such be the fact) of six applicants for and occupiers of homesteads under the laws of the United States, or, of (three) freeholders, and (three) applicants for and occupiers of homesteads, etc.), residing in the town of A—, in said county, and of six (or more) freeholders (or, as in above parenthesis, according to facts), residing in the town of B—, in said county of — (or, if the two towns be in different counties, say in the county of —), for the laying out (widening, altering or discontinuing) of a highway, which said highway is described in said application as follows: (describe as in application.)

We, the undersigned, supervisors of said towns did, on the — day of —, 18—, make out and sign a notice, and fix therein a time and place at which we would meet to decide upon the said application, and did meet on the — day of —, 18—, at — o'clock in the — noon of said day, at — (state place as in notice), it being the time and place fixed by us in said notice; and having been first satisfied by due proof that the notice aforesaid had been duly given five days previous to the time of our said meeting, to all the occupants of the lands in each town through which said highway passes (or, may pass), and had also been duly posted up in three public places in each of said towns ten days before the time of our said meeting, we, the undersigned, supervisors of each of said towns (or, constituting a majority of the supervisors of each of said towns), acting together, did proceed to examine personally such highway, and having heard all reasons which were offered for or against the laying out (widening, altering or, discontinuing) of the same,* did, so acting together, decide upon such application, and deeming it necessary, did then and there determine to lay out (widen, alter, or, discontinue) said highway, as hereinafter described:

Now, therefore, pursuant to said application, we, the undersigned, supervisors of each of said towns (or, constituting a majority of the supervisors of each of said towns), acting together, do hereby order and determine, that a highway be and

of damages, and in all other things the proceedings (1) shall be the same as are required by law

the same is hereby laid out (widened, altered, or, discontinued) as follows, to wit: (*here incorporate survey*) the same being an accurate survey thereof, caused by us to be made, and said highway being upon the town line between said towns, or as near thereto as the situation of the ground will admit. The line of said survey is the center of said highway, and the same is laid out of the width of four rods.

And we do further order and determine, that the following described part of said highway, to wit: (*describe the part*) shall be made and kept in repair by the town of ———, and the residue thereof by the town of ———; and that the damages awarded to (or, agreed upon with) the owners of the following described lands (*describe lands*), shall be paid by the said town of ———, and the damages awarded to (or, agreed upon with) the owners of the following described land (*describe lands*), shall be paid by the said town of ———.

Made and signed by us at ———, this ——— day of ———, 18—.

_____	,	} <i>Supervisors of the Town of</i>
_____	,	
_____	,	
_____	,	} <i>Supervisors of the Town of</i>
_____	,	
_____	,	

NOTE.—If an adjournment be had, continue from * in above form as follows: The said meeting having been duly adjourned by us to the ——— day of ———, 18—, at ——— o'clock in the ——— noon, at ——— (*designate place*), of the time and place of which adjournment, when made, public notice was duly given by us, and notice thereof was forthwith filed in the office of the town clerk of each of said towns, the undersigned supervisors of each of said towns (or, constituting a majority of the supervisors of each of said towns), did again meet at the said adjourned time and place, and having together made further examination in the premises and heard all further reasons that were offered for or against said application:

For form of notice of adjournment to be filed with town clerk of each town, see form under section 1263, which will be easily adapted.

(1) *Form of Agreement as to Amount of Damages upon Laying Out, Widening or Altering a Highway upon Town Line.*

Whereas, upon application therefor duly made, the supervisors of the town of ———, in the county of ———, and the supervisors of the town of ———, in said county (or, in the county of ———), have duly decided to lay out (widen, or, alter) a highway upon the line between said towns (or, as near thereto as the situation of the ground will admit), as follows: (*describe said highway as surveyed, if surveyed; otherwise as accurately as may be*), which said highway passes (or, will pass) over the following described lands, of which A. B. is the owner, to wit: (*describe the lands*).*

Now it is hereby agreed by and between the supervisors of the said towns of ——— and ———, and the said A. B., that the compensation which the said ——— (owner) ought to and shall receive for the damages sustained, or to be sustained, by him by reason of the laying out (widening, or, altering) of such highway, is hereby ascertained and fixed at the sum of ——— dollars, which sum the said A. B. hereby agrees to accept as full compensation for such damages.

In witness whereof, the said supervisors of each of said

towns and the said ——— (owner) have hereunto set their hands, this ——— day of ———, 18—.

—————, } Supervisors of
 —————, } the Town of
 —————, }
 —————, } Supervisors of
 —————, } the Town of
 —————, }

A——— B———, Owner (or occupant.)

Form of Release by Owner of Damages, in Case of Town Line Road.

*Proceed as in preceding form to *: and continue as follows:*
 Now know all men by these presents, that I, ——— (owner's name), for a valuable consideration by me received, do hereby release to said towns of ——— and ———, all claims for damages sustained, or to be sustained by me, by reason of the laying out (widening or altering) of said highway through my said lands.

In witness whereof, I have hereunto set my hand and seal, this ——— day of ———, 18—.

Signed, sealed and delivered in presence of:

—————, [SEAL]

Form of Award of Damages in Laying Out, etc., Town Line Road.

We, the undersigned, ———, ——— and ———, supervisors (or, constituting a majority of all the supervisors) of the town of ———, in the county of D———, and ———, ——— and ———, supervisors (or, constituting a majority of the supervisors) of the town of ———, in said county (or, in the county of B———), having, by an order bearing date the ——— day of ———, A. D. 18—, upon due application for that purpose, duly laid out, widened or altered) a highway, as follows, to wit: (here insert description of such highway, as in order) said highway being upon the town line between said towns, or as near thereto as the situation of the ground will admit; and the following named owners of lands through which said highway passes, or may pass, not having released all claim to damages sustained by reason of the laying out, (widening or, altering) of said highway, and we not being able to agree with them as to the amount of such damages, having applied to each of them for that purpose, and endeavored to make such agreement, did, at the time of making said order, assess the damages which such owners will severally sustain by reason of the laying out (widening, or, altering) and opening of said highway through their lands, and having taken into consideration the benefits which each owner aforesaid may receive thereby, we award such damages, as follows:

To A. B., on (describe lands), we have assessed and hereby award the sum of ——— dollars as such damages.

To C. D., on (describe lands) we have assessed, etc.

The owner of the following described parcel of land viz.: (describe land) being unknown to us, we award to such unknown owner, as such damages, the sum of ——— dollars.

Made and signed this ——— day of ———, A. D. 18—.

—————, } Supervisors of
 —————, } the Town of
 —————, }
 —————, } Supervisors of
 —————, } the Town of
 —————, }

in laying out, altering, widening or discontinuing highways within a town; the proceedings, or a duplicate thereof, shall be returned to each town clerk, and the order shall be recorded in each town clerk's office. The said supervisors, upon laying out, altering or widening such highway, shall determine, in their order, what part of such highway shall be made and kept in repair by each town, and what share of the damages, if any shall be paid by each, and each such town shall have all the rights and be subject to all the liabilities in relation to the part of such highway to be made or repaired by such town, as if it were wholly located in such town (a). Provided, any bridge on a highway between two towns, which highway has become such by reason of having been used and worked, as provided in section 1294, revised statutes, and which bridge has not been assigned to either of the adjoining towns, shall be repaired and maintained by the adjoining towns, and the cost of the same shall be paid by the said towns in proportion to the assessed valuation of the property of such towns, as equalized by the county board or boards at the last equalization.

SECTION 1274. (As amended by ch. 380, L. 1885.) Whenever it shall be deemed necessary to lay out, alter, widen or discontinue a highway upon the line between a town, and city or village, the application therefor shall be in duplicate, addressed to the supervisors of the town, and the common council of the city, or the board of trustees of the village, and be signed by at least six free-holders

Relating to
public streets
and bridges
between towns.

56 Wis. 266.

NOTE — The law requires the *proceedings* of the supervisors on laying out a town line road, "or a duplicate thereof," to be returned to the town clerk of each town. This involves more than returning copies.

The proceedings so to be returned *must be made out in duplicate and signed in duplicate*, so that one is as much an original instrument as the other; the theory of the law being, that in the town clerk's office of each town shall be found a complete set of *original proceedings*. Observe also that the order *must be recorded* in the town clerk's office of each town.

Section 1274 contemplates the same proceedings substantially as those provided for in the case of town line roads — except the application will be made by freeholders of a town and those of a city or village — and will be addressed to the supervisors of the town, and to the "commissioners" appointed for the purpose by the trustees of the village, or common council of the city. The forms under sections 1272 and 1273 will be readily adapted to the proceedings under section 1274.

(a) An agreement between two towns apportioning the expense of building and repairing a bridge on a highway between them, is a continuing argument relating to future repairs although such bridge was wholly within that part of the highway which was at the same time assigned to one of said towns to be kept in repair. If one of two towns which are jointly bound to keep a bridge in repair refuses to join in making necessary repairs, the other town may make them and recover the proportion of the expense thereof upon the town so refusing. [*Town of Waupun v. Town of Chester*, 61 Wis. 401.]

of the town and six free-holders of the city or village, and shall contain and set forth such statements as are and may be required by the charter of such city or village in cases of applications to take lands for the public use in such city or village; and thereupon such common council or board of trustees shall proceed, in conformity with the requirements of the charter of such city or village, to have the question of the necessity of taking the property proposed to be taken for the purpose of laying out, altering, widening or discontinuing such highway, established and determined by the verdict of a jury. In case the necessity of taking such property for the public use shall be established by the verdict of the jury in such proceedings, such common council or board of trustees shall thereupon appoint three commissioners on the part and behalf of such city or village, who shall be duly sworn to faithfully discharge their duty as such commissioners before entering on the same. Such commissioners acting for such city or village, and the town supervisors, acting on behalf of such town, shall then give notice and proceed in all respects pursuant to said application, as provided for the supervisors of adjoining towns in the next preceding section; and shall in their order laying out, altering or widening such highway, also determine the grade to and upon which such highway shall be made, improved and kept in repair; and such city or village shall be, in like manner as a town, responsible for that part of such highway determined to be made and kept in repair by the same, and for the share of damages assigned to the same. All proceedings and orders required to be filed and recorded, shall be filed and recorded in the office of the city or village clerk, as well as in the office of the town clerk; provided, that nothing herein shall be construed to interfere with or repeal the provision of the charter of any municipality relating to the same subject.

Highways, how
laid to real es-
tate, excluded
therefrom.

SECTION 1275. When any person shall present to the supervisors of any town an affidavit (1)

(1) *Affidavit under Section 1275.*

STATE OF WISCONSIN,)
County of ———.) ss.
Town of ———.

A. B., being first duly sworn, says that he is the owner of

satisfying them that he is the owner of real estate (describing the same) within said town, and that the same is shut out from all public highways, by being surrounded on all sides by real estate belonging to other persons, that he is unable to purchase from any of said persons the right of way over or through the same to a public highway, or that it cannot be purchased except at an exorbitant price, stating the lowest price for which the same can be purchased by him, the said supervisors may, in their discretion, after ten and within thirty days, and after giving notice (1) of the time

real estate within said town of —, described as follows: (*describing it*), and that the same is shut out from all public highways, by being surrounded on all sides by real estate belonging to other persons, viz: (*name surrounding owners*); that he is unable to purchase from any of said persons the right of way over or through their said property to a public highway (or that he cannot purchase from any of the owners aforesaid, the right of way over or through such surrounding real estate to a public highway, except at an exorbitant price, to wit: The lowest price for which the same can be purchased from C. D. is — dollars; from E. F. — dollars (*and so on*); or, that he is unable to purchase from E. F. the right of way over or through his real estate to a public highway, and that the lowest price for which he can purchase such right of way from C. D. is — dollars, which is an exorbitant price.)

(Signature.)

Subscribed and sworn to before me, this — day of —
18—.

E. F., Justice of the Peace.

(1) *Form of Notice of Meeting under Section 1275.*

Whereas, A. B., of the town of —, has presented to the undersigned, supervisors of said town, his affidavit, satisfying us that he is the owner of real estate within said town, described as follows, to wit: (*describing it*), and that the same is shut out from all public highways by being surrounded on all sides by real estate, belonging to other persons namely: (*names as in affidavit*), and that he is unable to purchase from any of said persons the right of way over or through their property to a public highway (or, that, *as in affidavit*), and has applied to us to lay out a public highway of not more than three nor less than two rods in width, to said real estate:

Notice is therefore hereby given, that we will meet at —, on the — day of —, 18—, in the — noon of that day, and will examine the premises, and hear and consider all proofs and reasons which may be offered for or against the said application; and if it shall seem to us that the public good requires that the said highway should be laid out, we will then and there, pursuant to the discretion in us vested by law, proceed to lay out the same.

Dated this — day of —, 18—.

— —, }
— —, } *Supervisors.*
— —, }

Damages, how
assessed.

and place of meeting therefor, by posting notices thereof in three of the most public places in said town, at least ten days before the time fixed therefor, proceed to lay out a public highway of not more than three nor less than two rods in width to such real estate, and shall assess the damages to the owner or owners of the real estate, over or through which the same shall be laid, and the advantages to the applicant; but the damages assessed by the supervisors shall in no case exceed the price stated in the affidavit of the applicant; upon laying out such highway, they shall make and sign an order (1) describing the same, and file

(1) *Form of Order Laying Out Highway under Section 1275.*

COUNTY OF ———, }
Town of ———. } ss.

Whereas, upon being satisfied by the affidavit of A. B., that he is the owner of real estate within said town of ———, described as follows (*describing it*), and that the same is shut out from all public highways by being surrounded on all sides by real estate belonging to other persons, namely: (*names as in affidavit*), and that he is unable to purchase from any of said persons the right of way over or through their said property to a public highway; or that (*according to the affidavit, as the case may be*); and the said A. B. having applied to us to lay out a public highway of not more than three nor less than two rods in width to his said real estate, we, the undersigned, did on the ——— day of ———, 18—, make out and sign a notice that we would meet at ———, on ——— day of ———, 18—, in the ——— noon of that day, and would examine the premises and hear and consider all proofs and reasons which might be offered for or against said application; and would, if the public good seemed to us to require that the said highway should be laid out, proceed, pursuant to the discretion in us vested by law, to lay out the same; and having posted said notice in three of the most public places in said town at least ten days before the time therein fixed for said meeting, did meet at ———, on the ——— day of ———, 18—, at ——— o'clock in the ——— noon, it being the time and place fixed by said notice therefor; and having examined the said premises, and heard and considered all proofs and reasons offered for and against the said application and it being our opinion that the public good requires that such highway should be laid out: Now, therefore, we, the undersigned, supervisors of said town, do hereby pursuant to the discretion in us vested by law, order and determine that a public highway be and the same is hereby laid out as follows, to wit: (*incorporate survey*), the same being an accurate survey by us caused to be made; and the said highway is laid out of the width of — rods.

Made and signed by us this ——— day of ———, 18—.

—————, }
—————, } *Supervisors.*
—————, }

NOTE.—The law is justly tender of the right of one whose property is sought to be taken against his will for public use, to be heard upon the ques-

the same with the town clerk, together with their award (±) of damages, which order shall be recorded by said clerk; *provided*, that the amount assessed as advantages to the applicant shall be paid to the town treasurer before the order for laying out such highway shall be filed.

SECTION 1276. (As amended by ch. 323, L. 1881.) Any person who shall consider himself aggrieved by any order laying out, altering, widening or discontinuing any highway, or by any refusal so to do under the preceding provisions, may within thirty days after such determination, appeal therefrom and apply to a justice of the peace of the same or an adjoining town in the county, or to the county judge, for the appointment of commissioners to review such order or determination. Such application (1) shall be in writing, and shall briefly

Manner of appeal provided for.
Aggrieved person.

tions affecting his interests; and though the statute does not in terms require it, it is suggested that it would be *prudent to serve copy of the notice when practicable*, upon the parties named in the affidavit as the owners of the surrounding lands. Where this is done, it would be well to recite the fact of such service in the order laying out the highway.

(1) *Form of Award of Damages under Section 1275.*

We, the undersigned, supervisors of the town of —, in the county of —, having by an order duly made by us, bearing date this — day of —, 18—, laid out a public highway to the land of A. B. (*describe same*), within said town, which said highway is described as follows: (*here insert a description of the highway*) did, at the time of making said order, assess the damages to the owner (or, owners) of the real estate over or through which said highway is laid, and the advantages of of such highway to the applicant therefor, as follows, to wit:

To C. D., on (*describe land*), we have assessed the sum of — dollars as such damages.

To E. F. (*in like manner and so on*).

And to A. B. the said applicant, we hereby assess as the advantages of said highway, — dollars.

Made and signed by us this — day of —, 18—.

_____,
_____,
_____, } Supervisors.

(1) *Form of Appeal from Determination of Supervisors.*

To —, county judge of the county of —: (or, a justice of the peace of the town of —, in the county of —).

I, A. B., of the town of —, considering ¶ myself aggrieved by the determination of the supervisors of the town of —, in said county, by their order bearing date the — day of —, 18—, laying out (*widening, altering or discontinuing*). (or, ¶ aggrieved by the determination of the supervisors of —, on the — day of —, 18—, refusing to lay out, etc.) a highway in said town, do hereby appeal therefrom, and

state the grounds upon which it is made, and whether it be made to reverse entirely such order

apply to you for the appointment of commissioners to review such order (or, determination.)

The said highway laid out (widened, altered, or discontinued) by said order is described therein as follows, to wit: (*describe highway as in order*), which said order was filed and recorded in the office of the town clerk of said town of —, on the — day of —, 18—.

(*Where appeal is from determination refusing to make an order laying out, widening, etc., a highway, say:* The highway for the laying out (widening, altering, or discontinuing) of which the said supervisors refused to make an order, is described in the application therefor as follows: (*describe in application*).

The grounds upon which said appeal is made are, briefly stated, as follows: (*here state same*), and said appeal is brought to reverse entirely the order, or, determination of said supervisors, or, to reverse a part of said order or determination, as follows: (*specify part sought to be reversed*). A. B.

Dated this — day of —, 18—.

Form of Appeal from Supervisors, etc.. Laying Out, etc., or Refusing to Lay Out, etc.. Highway on Line Between Towns, or Town, City or Village.

To —, county judge of the county of — (or a justice of the peace of the town of —, county of —):

I, A. B., of the town of —, in said county, considering myself aggrieved by the determination of the supervisors of the town of — and of — (or, of the town of —, and the commissioners of the city or village of —) by their order bearing date the — day of —, 18—, laying out (widening, altering, or discontinuing, etc.), or aggrieved by the determination of the supervisors of the towns of — and —, or of the supervisors of the town of —, and the commissioners of the city, or, village of —, refusing to lay out, etc.) a highway on the line between said towns of — and — (or, on the line between said town of — and the said city or village of —), do hereby appeal therefrom, and apply to you for the appointment of commissioners to review such order (or, determination)

The said highway laid out (*widened, altered or discontinued*) by said order, is described therein as follows, to wit: (*describe as in order*) which said order was made and signed in duplicate, and was filed in the office of the town clerks of the said towns of — and — (or, in the offices of the town clerk of the town of — and the city (or, village) clerk of —), on the — day of —, 18—.

(*Where appeal is from determination refusing to make an order laying out, etc., highway, say:* The highway, for the laying out (*widening, etc.*) of which the said supervisors (or, the said supervisors and commissioners) refused to make an order, is described in the application therefor as follows: (*describe as in application*).

The grounds upon which said appeal is made are, briefly stated, as follows: (*here state same*), and said appeal is brought to reverse entirely the order, or, determination of said supervisors of said towns (or, of said supervisors and commissioners), or to reverse a part of said order or determination, as follows: (*specify part*).

Dated this — day of —, 18—.

A. B.

or determination, or only a part, (a) and in the latter case it shall state what part; provided, that in case of highways upon a line between two or more counties, such application may be made to any justice of the peace in any adjoining town in either county, or to the county judge of either county, bounded in whole or in part by such highway.

SECTION 1277. Upon filing such application, and a bond (1) executed to the town or towns, or town, Bond to be given, commissioners, how appointed.

(a) Any person aggrieved by the action of the supervisors in laying out or refusing to lay out a three rod road under section 1275, or by the award of damages may appeal as in other cases. [See *State ex rel. Wood v. Goldstucker et al.* 40 Wis. 124.]

(1) Form of Bond on Appeal.

Know all men by these presents, that we, A. B. as principal, and C. D. and E. F. as sureties, all of the town of —, county of —, are held and firmly bound unto the said town of —, in the penal sum of — dollars, for the payment of which sum well and truly to be made we hereby bind ourselves, our, and each of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated this — day of —, 18—.

* Whereas, the above bounden A. B. has appealed from an order of the supervisors of the said town of —, bearing date on the — day of —, 18—, laying out (or, widening, etc., or ¶ from the determination of the supervisors of the town of —, on the — day of —, 18—, refusing to lay out (widen, etc.) a highway from — to — (as in the appeal): Now, the condition of this obligation is such, that if the above bounden A. B. shall pay all costs arising from such appeal, provided such order (or determination) of the said supervisors, so appealed from, shall not be reversed, then this obligation to be void; otherwise to remain in full force.

Signed, sealed and delivered in presence of:

A. B., [SEAL]
C. D., [SEAL]
E. F. [SEAL]

Form of Bond to Towns or Town and City (or Village) on Appeal.

Know all men by these presents, that we, A. B. as principal, and C. D. and E. F. as sureties, of the town of — (or, of the city, or, village of —), in the county of —, are held and firmly bound unto the towns of — and — (or, unto the town of —, and the city or village of —) in the penal sum of — dollars (proceed as in form of bond above to*, and continue as follows):

Whereas, the above bounden A. B. has appealed from ¶ an order made by the supervisors of the towns of — and — (or, by the supervisors of the town of —, and the commissioners of the city or village of —), bearing date on the — day of —, 18—, laying out, widening, etc., or ¶ from the determinations of the supervisors of the towns of — and — (or, of, etc. (as in last parenthesis), made on the — day

city or village, as the case may require, with sufficient sureties to be approved by the judge or justice, conditioned to pay all costs arising from such appeal, provided such order or determination of the supervisors, or supervisors and commissioners, shall not be reversed, and such judge or justice shall issue a notice (2) specifying therein a time and place for the appointment of commissioners, which shall be served on two or more of the supervisors of each town, and on two or more commissioners of the city or village in a proper case, at least six days before such time.

Proceedings,
how removed
from justice.

SECTION 1278. If such application be made to a justice of the peace, and at the time and place mentioned in such notice, said supervisors or commissioners shall appear, and before any further proceedings are had, file with such justice an

of —, 18—, refusing to lay out, etc., a highway from — to — (as in the appeal).

Now the condition of this obligation is such, that if the above bounden A. B. shall pay all costs arising from such appeal, provided the order (or, determination) of said supervisors (or, of said supervisors and commissioners) so appealed from, shall not be reversed, then this obligation to be void; otherwise to remain in full force.

Signed, sealed and delivered in presence of:

_____	_____	[SEAL.]
_____	_____	[SEAL.]
_____	_____	[SEAL.]

(2) *Form of Notice under Section 1277.*

To the supervisors of the town (or towns) of —: (or, to the supervisors of the town of — and the commissioners of the village, or, city of —):

Whereas, A. B. has duly made application in writing to the undersigned, a justice of the peace of the town of —, in the county of — (or, to the undersigned county judge of the county of —), for the appointment of commissioners to review the order (or, determination) made relating to a certain highway by the supervisors of the town of — (or, of the towns of — and —; or, of the supervisors of the town of —, and the commissioners of the village or city of —), which order (or, determination) and the grounds of appeal therefrom by said A. B., together with a description of such highway, are set forth in said application; and such application having been duly filed, together with the bond * of the said A. B., duly executed and approved as provided by law: Now, therefore, you are hereby notified, that the time and place fixed by me for the appointment of said commissioners is (Thursday) the — day of —, 18—, at — o'clock in the — noon, at my office in the town of —, in said county.

Dated this — day of —, 18—.

_____, Justice of the Peace.
(or, —, County Judge.)

affidavit (1) made by one or more of them, stating that he has reason to believe and does believe that such justice will not act impartially in the appointment of commissioners, and pay to such justice seventy-five cents, he shall immediately transmit all the papers in the case, with a statement in writing of the proceedings had before him, to the nearest justice of the peace in the county; but there shall be no second removal of such proceedings.

SECTION 1279. At the time and place named therein, and upon proof of service of such notice, the judge or justice to whom the application was made, or the justice to whom the matter shall have been so removed, as soon thereafter as he shall receive the papers transmitted to him, shall make a list of eighteen disinterested freeholders of the county; and each party shall strike six names from the list, and in case none of the supervisors or commissioners be present, the judge or justice shall strike off the names for them, and out of the number not struck off, the judge or justice shall by lot select three as such commissioners; and shall thereupon annex to the application a warrant (2), under his hand, directed

Commissioners, how selected and summoned.

51 Wis. 147.

(1) *Form of Affidavit for Removal of Proceedings.*

STATE OF WISCONSIN, } ss.
County of ———.

E. F., being first duly sworn, on oath says that he is one of the supervisors of the town of ——— (or, one of the commissioners of the village of ———), and that he has reason to believe and does believe that C. D., a justice of the peace of the town of ———, in said county, will not act impartially in the appointment of commissioners in the matter of the application of A. B., which has been made to him, said justice, for the appointment of commissioners to review the order (or, determination) set forth in said application and which the said A. B. has appealed from.

Subscribed and sworn to before me, this ——— day of ——— 18—. E. F.

(2) *Form of Warrant for the Appointment of Commissioners to Determine Appeal.*

COUNTY OF ———, } ss.
Town of ———.

To ——— and ———, of said county:

You are hereby appointed by the undersigned, a justice of the peace of said town of ——— (or, by the undersigned county judge of said county of ———), as commissioners to review the order (or, determination) in relation to a certain

Warrants,
when served.

to the persons so selected, requiring them to appear personally at a time and place fixed therein, not more than ten days from the date thereof, and directing them to view and examine the highway described in such application, and review the order or determination appealed from, and make return of their decision thereon to the town, city or village clerk, as the case may require, within twenty days after the date thereof; such warrant shall be served at least three days before the time fixed therein for their meeting, by some officer or other person, by reading the same to each of said commissioners, and delivering it to one of them. If, for any reason, one or more of said commissioners shall fail to act, the judge or justice making the appointment shall, on receiving notice of such failure, by lot and without notice to either party, select from the number not struck off or drawn from said list, one or more commissioners,

highway described in the application of A. B., hereto annexed and appealed from thereon by him; and you are required to appear personally at (specifying the place) on the _____ day of _____, 18—, at _____ o'clock in the _____ noon, and are hereby directed then and there to view and examine the said highway described in said annexed application, and to review the order (or determination) so appealed from, * and make return of your decision thereon to the town clerk of the town of _____ (where highway lies) within twenty days after the date thereof.

Given under my hand this _____ day of _____, 18—.

Justice of the Peace.

(or _____,
County Judge)

*If the highway be on a line between two towns, or between a town, city or village, the warrant should proceed from the * in the above form, as follows: and make a return of your decision thereon, together with a duplicate thereof, with a copy of said application and of this warrant annexed thereto, the former to the town (city or village) clerk of _____, and the latter to the town clerk of _____, within twenty days after the date hereof.*

NOTE.—It must be borne in mind that in all cases in which the order or determination appealed from relates to a highway which is on a line between two towns, or between a town and a city or village, the decision of the commissioners must be made and signed in duplicate, one of which is to be annexed to the warrant and application, and to the other is to be annexed a copy of the warrant and application.

The warrant directs where they shall be returned.

NOTE.—Persons who have signed the petition for the proposed alteration of a highway should not be appointed commissioners to determine an appeal from an order of the board of supervisors. [Brock v. Hishen, 40 Wis. 674. Williams v. Mitchell, 49 Wis. 284].

The objection is too late after the appeal is determined. [State ex rel. v. Nelson, 57 Wis. 151].

If the owner of the land accepts damages awarded him for the taking of his lands for a highway, he is estopped from setting up irregularities in the proceedings in laying out the highway. [Schatz v. Pfeil, 56 Wis. 429].

as the case may require, to fill the vacancy or vacancies in the commission. And in case this list is exhausted before three commissioners are obtained who can and will act, then, without notice to either party, a number of commissioners sufficient to supply the deficiency and having the qualifications above required, shall be summoned by order of the appointing officer, in the same manner that talesmen are summoned to complete juries in courts held by justices of the peace, to the end that said appeal may have effect (3). Whenever a new commissioner is drawn or summoned to fill a deficiency, the time for the commissioners to appear, view and examine the highway may be enlarged by the appointing officer to not exceeding ten days, and the time for making return of their decision, to not more than twenty days from the date of filling such vacancy. Any commissioner may be excused from acting by the officer appointing him, for good cause; and if any commissioner, after due service upon him of the warrant by which he was appointed, and not so excused, shall, without good cause, refuse to act, he shall forfeit ten dollars, and shall also be liable to the party having the costs of the appeal to pay, for the additional costs made in consequence of such refusal.

SECTION 1280. (As amended by chapter 137, Laws 1881). Before proceeding to act under said

Proceedings of
commissioners.

57 Wis. 147.

(3) *Form of Summons to Supply Deficiency in Number of Commissioners.*

COUNTY OF _____, }
Town of _____, } ss.

THE STATE OF WISCONSIN, to the sheriff or any constable of said county:

You are hereby commanded to summon (—) disinterested freeholders of said county, to be and appear forthwith before the undersigned, a justice of the peace of said town of _____ (or before the undersigned, county judge of said county), at my office in the town of _____, to serve as commissioners to review a certain order (or determination) made by the supervisors of the town of _____, (or the supervisors of the towns of _____ and _____, or the supervisors of the town of _____ and the commissioners of the city (or, village of _____), bearing date on the _____ day of _____, 18—, in relation to a certain highway therein described, from which order (or, determination) an appeal has been taken by A. B.

And have you then and there this writ.

Given under my hand this _____ day of _____, 18—.

Justice of the Peace, or, County Judge.

warrant, said commissioners shall be duly sworn, justly and impartially to discharge their duties as such commissioners; they shall meet at the time and place mentioned in such warrant, and proceed to examine such highway; they shall hear the parties interested therein, and any proofs offered by them; their decision (1) shall be reduced to writing, signed by them, annexed to the warrant, and together with the same be filed with the town, city or village clerk, as the case may require, within the time directed in such warrant (a).

(1) *Form of Decision of Commissioners on Appeal.*

Whereas, by a warrant under the hand of —, a justice of the peace of the town of —, in the county of —, bearing date the — day of —, 18—, (or, under the hand of —, county judge of — county, bearing date, etc.) ¶ which warrant is hereto annexed, the undersigned, three disinterested freeholders of said county, were duly appointed commissioners to review a certain order (or determination) laying out (widening, altering or, discontinuing) a highway (or, a certain determination, refusing to lay out, (or, widen, etc.) a highway) the description whereof is set forth, and which said order, or determination is referred to in the application on appeal of A. B., which said application is annexed to said warrant, and were required by said warrant* to appear at a time and place therein fixed, and thereby directed to view and examine the highway described in such application so annexed, and to review the order (or, determination) referred to therein; and such warrant having been duly served upon us, at least three days before the time fixed therein for the meeting, and having met at (state the place), on the — day of —, 18—, at — o'clock in the — noon, it being the time and place fixed therefor in said warrant, and having been first duly sworn justly and impartially to discharge our duties as such commissioners, we did then and there proceed to view and examine the said highway, described in such application, and to review the order (or, determination) appealed from as aforesaid, and having viewed and examined said highway, and heard the parties interested therein, and all proofs offered by them, and having reviewed such order or determination, we do decide and determine that the same (or, that part thereof appealed from) be and the same is hereby in all things affirmed (or, reversed.)

Given under our hands this — day of —, 18—.

_____ } Commissioners.

NOTE.— When the decision is required to be made in duplicate, say in one: ¶ Copy of which warrant, and of the application upon which the same was issued, are hereto annexed.

(a) If two of the three commissioners sign the decision it is sufficient. [State ex rel McCune et al., v. Goodwin et al., 24 Wis. 286.]

The commissioners appointed by virtue of section 1279 have no authority to inquire into the regularity or irregularity of the appeal. After appointment and qualification they cannot refuse to act on the ground of assumed irregularity.

The question of the regularity of the appeal should be determined judi-

Each commissioner shall receive one dollar per day and ten cents per mile for his actual travel, and the justice or judge two dollars for his fees, to be paid by the party appealing; and if the order or determination appealed from be reversed, he shall be reimbursed such expenses by the town, city or village, or if it be a town line road, the same shall be reimbursed equally by such towns, or by the town and city or village. The judge or justice shall cause to be filed with the town clerk, all the other papers and proceedings, relating to such appeal, duly certified by him. If such highway be on a line between two towns, or between a town, city or village, they shall make a duplicate of their decision, with a copy of their warrant and application annexed, which shall be filed with the town clerk of the other town, or of the city or village, as the case may be. If the decision of the commissioners shall be appealed from, under the provisions of section one thousand two hundred and eighty-one, and shall be reversed and the order or determination of the supervisors shall be finally affirmed, the person appealing from the original order shall pay the costs of the appeal and shall not be reimbursed for the costs and fees required to be paid by him under the provisions of this section.

Compensation.

Fees of justice.

Papers, where filed.

Persons appealing to pay costs if decision is affirmed.

SECTION 1281. Any person who shall consider himself aggrieved by the decision of commissioners appointed by a justice of the peace, may, within thirty days after the filing of such decision appeal therefrom to the county judge of the same county, for the appointment of commis-

Appeals from commissioners, how taken, etc.

cially when raised in the proper forum. [*State ex rel. Dostader v. Bailey*, 6 Wis. 291.]

Their duty plainly is to examine the highway laid out, widened, altered or discontinued by the supervisors, and to make return of their decision in the premises.—[*Id.*]

Commissioners appointed under section 1279 have no power to review and reverse such decision for errors of law, but are confined to examination of the necessity or propriety of laying out such highway, assuming all the steps previously taken to have been regular. [*Morris v. Ferguson et al.*, 14 Wis. 368.]

The application for the appointment of commissioners of appeal may be made to a justice of the peace of any city ward adjoining the town to which the highway pertains. [*The State ex rel. Wood v. Goldstucker*, 40 Wis. 124; *Brock et al. v. Hishen et al.* *Id.* 674.]

The name of a commissioner who has previously acted as a supervisor in the matter of the same highway, should be stricken from the list, if the objection is taken when the commissioners are selected. But after the commissioners have determined the appeal, the objection comes too late. [*Brock et al. v. Hishen et al.*, 40 Wis. 674.]

When the law requires that a jury shall be composed of freeholders, it is not enough that such were directed to be summoned, but it must appear affirmatively that such were summoned and composed the jury. [*United States ex rel. McDonald v. Supervisors of Summit*, 1 Pinney, 566.]

sioners to review such decision. Such appeal shall be by a written application (1) in like form, and shall be accompanied by a like bond (2), and all further proceedings had thereon as if such appeal had been taken originally from the decision of the supervisors to such judge, except that the notice (3) of the time and place of appointing

(1) *Form of Application on Appeal to County Judge.*

To ———, county judge of the county of ———:

I, ———, of the town of ———, considering myself aggrieved by the decision of the commissioners appointed by ———, a justice of the peace of the town of ———, in said county, upon the application of A. B. the refor, which decision was made and returned on the ——— day of ———, 18—, do hereby appeal therefrom, and for the appointment of three disinterested freeholders of said county as commissioners to review such decision. A copy of said application and decision is hereto attached and made a part thereof.

The grounds upon which this appeal is made are, briefly stated, as follows: (*here state same*); and this appeal is made to reverse entirely the said decision of said commissioners; or, to reverse a part of the decision of said commissioners (*here specify the part sought to be reversed*).

(Signature.)

Dated this ——— day of ———, 18—.

(2) *Form of Bond on Appeal to County Judge.*

For the bond, except as to condition, see forms under section 1277.

The condition may be as follows:

Whereas, the above bounden ——— has appealed from the decision of the commissioners appointed on the ——— day of ———, 18—, by ———, a justice of the peace of ——— county, to review the order (*or, determination*) of the supervisors of the town of ———, laying out (*widening, altering or discontinuing, or, refusing to lay out, widen, etc.*) a highway, which said decision bears date this ——— day of ———, 18—, and affirms (*or reverses*) in whole (*or in part*) the order or determination of the supervisors as afore-said; and has made written application to the county judge of the county of ——— for the appointment of commissioners as provided by law, to review such decision: Now, the condition of this obligation is such, that if the above bounden ——— shall pay all costs arising from such appeal, provide such decision of the said commissioners, so heretofore appointed, shall not be reversed, then this obligation to be void; otherwise to remain in full force.

(Signatures.)

Signed, sealed and delivered in presence of: ———.

(3) *Form of Notice Under Section 1281.*

Whereas, ——— has duly appealed to the undersigned, county judge of ——— county, from the decision of commissioners appointed on the ——— day of ———, 18—, on the appeal and application of A. B. by warrant under the

such commissioners shall be also served upon the person who took the first appeal as well as the supervisors, in case the decision of the supervisors was reversed on such appeal (1).

SECTION 1282. When an appeal shall have been made from the determination of the supervisors, refusing to lay out, widen, alter or discontinue a highway, and such determination shall be finally reversed by the commissioners, the supervisors shall proceed to lay out, widen, alter or discontinue such highway in the same manner, and the proceedings thereon shall be the same as if they had originally determined to lay out, widen, alter, or discontinue such highway (2).

Proceedings of supervisors, when their order is reversed.

9 Wis. 554.

hand of ———, a justice of the peace of the town of ———, to review the order (or, determination) of the supervisors of the town of ——— in relation to a certain highway therein, which decision was made on the ——— day of ———, 18—, and filed (state where), and a copy whereof is attached to the appeal of ——— to me herein, and has duly filed with me a written application for the appointment of commissioners to review such decision, accompanied with the bond, etc., (proceed as in form 1, under section 1277 from the*).

(1) *Form of Decision of Commissioners Appointed by County Judge on Appeal under Section 1281.*

Whereas, by a warrant under the hand of ———, county judge of the county of ———, bearing date the ——— day of ———, 18—, which warrant is hereto annexed, the undersigned disinterested freeholders of said county were duly appointed commissioners to review the decision made in the matter of a certain highway by ———, ——— and ———, the commissioners appointed on the ——— day of ———, 18—, by warrant under the hands of ———, a justice of the peace of the town of ———, which decision, together with a description of said highway, is set forth in the application on appeal to said county judge, hereto annexed; and were required by said warrant, etc. (proceed as in form 2, under section 1280 from the*).

(2) *Form of Order Laying Out, etc., Highway in Conformity to Decision on Appeal.*

Whereas, on the ——— day of ———, 18—, the undersigned, supervisors of the town of ———, in the county of ———, decided against the application to them duly made by E. F. and others, dated the ——— day of ———, 18—, to lay out (or, widen, etc.) a highway described in such application, as follows: (setting out the same), and afterwards upon appeal taken by A. B. from the determination so refusing to lay out, etc., such highway as aforesaid, commissioners were duly appointed to review the said determination, and such proceedings were duly had before them that the same was finally reversed, as appears by their decision on said appeal, duly filed in the office of the town clerk of ———, on the ——— day of ———, 18—: Now, therefore, in conformity with said decision and

Determination
of supervisors,
when final.

When super-
visors not to
act again.

Highway dis-
continued, be-
fore opened,
when.

When fences
not to be re-
moved, etc.

4 Wis. 409.
24 Wis. 466.

SECTION 1283. The determination of the supervisors of any town in refusing to lay out, alter, widen or discontinue any highway, shall be final (unless such determination be appealed from as provided in this chapter) for the term of one year after the making of such determination; and no application for laying out, widening, altering or discontinuing any such highway shall be again acted upon by said supervisors within said term of one year; and in case the determination of the supervisors of any town in laying out, widening, altering or discontinuing any highway, or refusing so to do, shall be appealed from as provided in this chapter, and such determination shall be reversed on such appeal the said supervisors shall not within one year after the making of the determination, reversed on such appeal, act again upon any application to lay out, widen, alter or discontinue any such highway; but this section shall not prevent the discontinuance of a highway before it shall be opened and after the damages first awarded shall have been increased on appeal.

SECTION 1284. Whenever the supervisors shall have laid out, widened or altered any public highway through any inclosed, cultivated or improved lands, and their determination shall not have been appealed from, they shall give the owner or occupant of such lands notice (1) in writing to remove

pursuant to the application before mentioned: It is hereby ordered and determined (*proceed as in form 1, section 1269, from the **).

(1) *Form of Notice to Remove Fence, under Section 1284.*

To A. B.:

A highway having been laid out (*widened or altered*) through lands occupied by you, described as follows: (*describe lands*) by an order made by the undersigned, and dated the _____ day of _____, 18—, a copy of which is hereto annexed: You are hereby required to remove your fences from within the bounds of said highway, within _____ days after service of this notice upon you.

Dated this _____ day of _____, 18—.

_____,
_____,
_____, } *Supervisors of the
Town of _____.*

NOTE.—If the highway so laid out be upon a town line, the above notice should be signed by the supervisors of both towns; or if upon the line between a town and a city or village, by the supervisors of the town and the city or village commissioners.

his fences, within such time as they shall deem reasonable, not less than thirty days after giving such notice; but no person shall be required to remove such fences between the first day of April and the first day of November in any year; and if such owner or occupant shall not remove his fences within the time required in such notice, the supervisors shall cause such fence to be removed, and shall direct such road to be opened (a), but if the determination of the supervisors shall have been appealed from, then such notice shall be given after the final decision of such appeal.

SECTION 1285. If any owner of lands through which a highway shall be laid out, widened or altered under any of the preceding provisions, shall not be satisfied with the sum awarded to him for damages, he may, within forty days after the filing of the award of damages in the proper office or offices, and if within said forty days an appeal shall have been taken from the order laying out, widening or altering such highway in the manner provided by law, then at any time within forty days after the final order on such appeal, affirming the same, apply to a justice of the peace of the same or an adjoining town in the county, or to the county judge of the same county, for a jury to assess and appraise such damages; such application shall be made in writing (1),

Appeals for damages, when to be taken, etc.

6 Wis. 291.
56 Wis. 239.

(a) The laying out of a highway through inclosed land is not taking or appropriating it to the public use. The public acquire no right to travel upon it until a further act is done, that is, until it is opened by order of the supervisors. This, under our statute, is necessary before the public can use the land as a highway; and until the right to use the property is vested in the public, it cannot be said to be taken. It remains private property, and the owner is not entitled to damages before the road is so opened. (*The State ex rel. Evans v. James et al.* 4 Wis. 408.)

A majority of the supervisors may order a road opened, but one supervisor cannot sign the name of another to the order without his immediate assent and direction. [*Id.* 408.]

When the decision of appeal commissioners reversing a determination of supervisors refusing to lay out, etc., a highway is filed, it becomes the duty of the supervisors to lay out, etc., such highway. They have then no discretion in the matter. The statute prescribes no specific time within which this shall be done. If they refuse or neglect to do so within a reasonable time, the court on proper application will compel them to discharge the duty. [*Bruck et al. v. Hishen et al.* 40 Wis. 674.]

(1) Form of Application under Section 1285.

To _____, county judge of the county of _____, (or) a justice of the peace of the town of _____, of the county of _____:

The supervisors of the town of _____, in _____ county, or the supervisors of the towns of _____ and _____, (or) of the town of _____, and the commissioners of the city, or, village of _____,

describing the premises, and any number of persons claiming damages on account of such highway may join in such application. The party appealing shall serve on two of the supervisors of the town in which such highway shall be laid out, widened or altered, or upon two or more of the supervisors or commissioners of the town, city or village to which shall have been assigned the duty of paying the damages for such land, at least six days before the time fixed for making such application, a notice (1) in writing, specifying

having by an order dated the — day of —, laid out (widened; or, altered) a highway from — to — (*give description of highway as in order laying out, etc., the same*), and through *the following described lands, to wit: (*describe lands*), of which I am the owner, and not being satisfied with the sum awarded to me by them for the damages I sustained (or, will sustain) by the laying out (widening, or, altering) of said highway through said lands, which award was filed on the — day of —, 18—, in the office of the town clerk of the town of —, I hereby apply to you for a jury to assess and appraise such damages.

Dated at —, this — day of —, 18—.

*Should several join in the applications, the same may conclude thus: *Through the following described lands, to wit: — (describing), of which the undersigned A. B. is the owner, and through the — (describing), of which the undersigned C. D. is the owner (and so on), and we not being satisfied with the sums severally awarded to us for damages which we have sustained (or, will sustain) by the laying out, etc., of said highway through our said lands, which award was filed on the — day of —, 18—, in the office of the town clerk of the town of —, do hereby apply, etc., (as in preceding form.)*

(1) *Form of Notice of Application for Jury to Assess Damages. To the supervisors of the town or towns of —, (or) to the supervisors of the town of —, and the commissioners of the village or city of —:*

I (or if a number join in the application say, we) the undersigned, do hereby notify you, that, not being satisfied with the sum awarded to me (or, to us) by the supervisors of the town of — (or, by the supervisors of the towns of —, and —, or, by the supervisors of the town of —, and the commissioners of the village, or, city of —), for damages from the laying out, (widening or, altering) of a highway through my land (or, through lands severally owned by us) in said town of —, by their award dated this — day of —, 18—, and duly filed in the office of —, (*state where*), I (or we) will apply to —, a justice of the peace of the town of — (or, to — county judge of), in — county, at his office in said town on the — day of —, 18—, at — o'clock in the — noon, for a jury to assess and appraise such damages.

Dated this — day of —, 18—.

ing therein the name of the judge or justice to whom, and the time and place when and where such application will be made.

SECTION 1286. Any person applying for such jury shall himself or by his agent execute to the proper town, city or village, and file with the judge or justice, a bond (2), with one or more sureties to be approved by such judge or justice, conditioned to pay all costs arising from such appeal and appraisal of damages, if such jury shall not award a larger amount of damages than were awarded by the supervisors of the town, or the supervisors and the commissioners of the city or village, as the case may be.

Bond on appeal.

SECTION 1287. Upon filing such bond and notice, with proof of service thereof, such judge or justice shall make out a list of fifteen disinterested freeholders of his county, not of kin to the owner or occupant of said lands (a); each party shall strike five from such list, and if none of the proper supervisors or commissioners shall be present, the judge or justice shall strike off the

Jury how selected, summoned, etc.

4 Pin. 566.
17 Wis. 687.

(2) *Form of Bond under Section 1286.*

*Proceed as in form number 1, section 1277, to the *, and continue:*

Whereas, the above bounden A. B., not being satisfied with the sum awarded to him by the supervisors of the town of ——— (or, by the supervisors of the towns of ——— and ———, or, by the supervisors of the town of ———, and the commissioners of the city or village of ———), for damages upon the laying out (or, altering, etc.) of a highway through his lands, situated in said town (or, etc.) of ———, by their award of damages, dated the ——— day of ———, 18—, and duly filed in the office of ——— (state where) and has appealed from said award, and applied to ———, a justice of the peace of the town of ———, (or, to ———, county judge of the county of ———), for a jury to assess and appraise such damages, as provided by law.

Now, therefore, the condition of this obligation is such, that if the said A. B. will pay all costs arising from such appeal and appraisal of damages, if such jury shall not award a larger amount of damages than were awarded by the supervisors of said town (or, by the supervisors and commissioners, etc., as the case may be), then this obligation to be void; otherwise to remain in full force and effect.

— — — [SEAL].

Signed, sealed and delivered in presence of: — — —.

(a) The justice should exercise care and caution to put none on the list but those who are legally qualified to act; but, if by mistake he puts on some who are not freeholders that fact alone will not invalidate the award of such jury, if the supervisors, being properly notified, fail to attend when the selection is made, [*Van Vliet ex rel. v. Wilson et al.* 17 Wis. 687.]

five names for them, and the judge or justice shall thereupon issue a precept (1) to some constable of his county, neither interested nor of kin to any person through whose land such road is laid, directing him to summon the five persons named in such list not stricken off, to meet at a time and place to be specified in such precept, to appraise the damages sustained by the laying out, widening or altering of such highway. In case any of said jurors fail to appear at the time and place fixed for their meeting, or fail to serve for any reason, a number of talesmen sufficient to supply the deficiency and having the qualifications above named, shall then be summoned in the same manner that talesmen are summoned to complete juries in courts held by justices of the peace. Any juror may be excused from serving by the officer appointing him, for good cause; and if any juror who has been duly summoned, and who is not so excused, shall fail to serve as such juror, he shall forfeit not to exceed ten dollars, and shall also be liable to the party having the costs of the appeal to pay for the additional costs made in consequence of such failure.

Proceedings
before jury.

6 Wis. §91.
11 Wis. §66.

SECTION 1288. At the time and place appointed for the appearing of such jury, they shall be sworn (2) by the judge or justice justly and im-

(1) *Form of Precept to Constable or Jury to Assess Damages.*

COUNTY OF —, } ss.
Town of — }

THE STATE OF WISCONSIN, to — —, a constable of the town of —, in said county:

You are hereby commanded to summon (*here name the five persons selected*) to meet on the — day of —, 18—, at — o'clock in the — noon, at (*designate place*) in the town of —, as a jury, to assess and appraise the damages sustained by — by the laying out (*widening or altering*) of a highway through his land, by an order of the supervisors of the town of — (or, of the towns of — and —; or, of the supervisors of the town of — and the village (or city) commissioners of —), dated the — day of —, 18—; and forthwith make return of this precept.

Given under my hand, this — day of —, 18—.

Justice of the Peace of the town of —,
(or, — —, County Judge.)

(2) *Form of Oath to Jury to Assess Damages.*

You, and each of you, do solemnly swear, that you will justly and impartially make an appraisal of the damages sustained by — —, by reason of the laying out (*widening or*

partially to make such appraisal, and shall proceed to view such highway and hear the statements and proofs of the parties, and such jury may increase or diminish the amount awarded, and they shall make return of their appraisal (1) to the judge or justice, signed by them; and if the amount of the appraisal of such jury shall exceed the amount awarded by the supervisors or the supervisors and commissioners, the costs and expenses shall be paid by the proper town, city or village; but if the jury shall not award more damages than were awarded by the supervisors or the supervisors and commissioners, the costs and expenses shall be paid by the appellant. If the jury shall fail to agree, and be discharged by the judge or justice for that reason, he shall immediately proceed to make another list of such freeholders, and further proceedings shall be had thereon in all respects as in the case of a first jury. When the jury shall have made a return of their appraisal to the judge or justice, he shall adjust the costs and expenses of such proceedings, and within ten days thereafter return such appraisal to the town clerk, together with all the other papers relating to such appeal, a statement of the proceedings had before him, and of the costs and expenses in detail, duly certified by him, which shall be forthwith filed by the clerk; and if two towns, or a town and city or village be interested, he shall make and file a certified copy of the appraisal papers and statements with the clerk of such other town, city or village.

Costs, how
paid, apprais-
al, where filed,
etc.

altering) of a highway by the supervisors of the town of —, by their order, dated the — day of —, 18—. So help you God.

(1) *Form of Appraisal by Jury of Damages.*

COUNTY OF —, }
Town of — } ss.

Whereas, by a precept issued by — —, a justice of the peace of the town of —, (or, by — —, county judge of said county), we, the undersigned, being disinterested freeholders of said county, and not of kin to A. B., were duly summoned as a jury to meet on the — day of —, 18—, at — o'clock in the — noon, at (*give the place*), to appraise the damages sustained by said A. B. by the laying out (*widening or altering*) of a highway through his lands, to wit: (*describe lands*) by an order of the supervisors of the town of — (or, of the towns of — and —; or, of the supervisors of the town of — and the commissioners of the

Appeal from
the appraisal
by jury, etc.

SECTION 1289. The supervisors of any town or commissioners for a city or village, liable to pay the damages appraised by a jury under the preceding section, may, when the first appeal was made to a justice of the peace, if they deem the damages excessive, appeal within thirty days from such appraisal to the county judge of the same county by an application (1) in writing, stating the appraisal, or part of appraisal from which such appeal is taken, and the grounds thereof. They shall, at least six days before the time of making such application, cause to be served on each person in whose favor the appraisal appealed from was made, a notice (2) in writ-

village or city of ———), bearing date the ——— day of ———, 18—: And having met at the time and place appointed as aforesaid for the appearing of such jury, and having been sworn by said justice (or judge) justly and impartially to make such appraisal, we proceeded to view such highway; and having heard the statements and proofs of the parties, we do appraise and assess the damages of said A. B. at ——— dollars.
(To be signed by all the jurors.)

Dated this ——— day of ———, 18—.

(1) *Form of Application Under Section 1289.*

To ———, county judge of ——— county:

A jury having been heretofore duly summoned, under precept of ———, a justice of the peace of the town of ———, in the county of ———, dated on the ——— day of ———, 18—, application therefor having been duly made by A. B., to assess and appraise the damages which he has sustained (or, will sustain) by laying out (or widening, etc.) of a highway, by an order of the supervisors of the town of ——— (or, of the towns of, etc.) bearing date the ——— day of ———, 18—, through lands of which said A. B. is the owner, viz.: (describe lands), and said jury having assessed and appraised the damages of said A. B. at the sum of ——— dollars, as appears from their return, dated the ——— day of ———, 18—, and filed in the office of ——— (state where), on the ——— day of ———, 18—:

Now, therefore, the undersigned, supervisors of the town of ——— (or, of the towns of, etc.), deeming the damages so appraised by said jury excessive, do hereby appeal therefrom upon that ground, and apply to you for a jury to assess and appraise such damages.

Dated this ——— day of ———, 18—.

—————, } Supervisors of
—————, } the Town of
—————, }

(2) *Form of Notice Under Section 1289.*

To A. B.:

We, the undersigned supervisors of the town of ——— (or, commissioners of the village, or city of), in the county of ———, hereby notify you that on the ——— day of ———, 18—, at

ing specifying the time and place where such application will be made. Upon filing such application and proof of service of such notice, further proceedings shall be in all respects as directed in case of appeal to the county judge from the original award, except that the county judge shall strike the jury for any party absent or refusing to act.

Proceedings on appeal.

SECTION 1290. If the amount of damages finally awarded upon appeal shall exceed the amount originally awarded, all costs and expenses of all appeals shall be paid by the town liable to such damages; otherwise by the party who first appealed. Each juror shall receive one dollar for his services, and ten cents a mile for his actual and necessary travel, in going to and returning from the place of meeting, and the judge or justice shall receive two dollars for his fees; all payable in advance by the party appealing, and to be a charge against the party finally liable for the costs.

Costs and fees of jurors.

SECTION 1291. (As amended by ch. 289, L. 1885). All damages lawfully awarded to any person for laying out, widening or altering any highway, shall be a charge against the town; or in case of a highway on the line between two towns, or between a town and a city or village, against such town, city or village as shall be assigned to pay the same, in the manner hereinbefore provided, at any time after the highway shall have been opened by order of the supervisors, and not before, and shall then be audited and paid, or sued for and collected, in the same manner as

Damages a charge against town how collected.

— o'clock in the — noon of said day, we shall present to —, county judge of said county, at his office in (*state place*), an appeal from the appraisal of the jury heretofore summoned to appraise the damages sustained by you by the laying out (*or, widening, etc.*) of a highway through your land, described as follows: (*describe land*), in the town of —; the said appraisal bearing date on the — day of —, 18—, and (*or, a certified copy thereof*) being filed with the clerk of the town (*village or city*) of —, and will at the same time and place, make application in writing to said —, for a jury to assess and appraise such damages.

Dated this — day of —, 18—.

—, } Supervisors of
—, } the Town of
—, }

If damages exceed \$250 not to be paid except upon a vote of town.

No liability till road is opened.

Town orders how collected.

Unrecorded roads may be discontinued.

Turnpike, gravel or plank roads highways on abandonment, how repaired.

other debts of the town (a); but when the total amount of damages chargeable to one town consequent upon any one order for laying out, widening or altering a highway, shall be two hundred and fifty dollars or more, such highway shall not be opened, widened or altered, nor liability for damages exist, unless such order be approved and such highway accepted by a majority of the qualified electors of the town liable to such damages voting thereon at the next annual town meeting, or some special town meeting, sooner called therefor. And no liability for such damages shall exist for any highway discontinued in the manner hereinbefore provided, before being opened. All costs and fees directed to be paid by any town, city or village by this chapter, shall be audited and paid, or may be sued for and collected as other debts against such town, city or village. When any town order or orders shall be given pursuant to this section, and there shall be no unappropriated money in the town treasury sufficient to pay the same, the town board shall certify the total amount to the town clerk, who shall place the same on the next tax roll, with interest thereon, from the date of such order, in the same manner as a tax to pay a judgment, and the same shall be in like manner collected and paid to the parties entitled thereto, with such interest.

SECTION 1292. Any unrecorded road or any part thereof, which has become or is in the process of becoming a public highway by user, in any town, may be discontinued in the manner hereinbefore provided. Any proceedings taken therefor shall not be evidence of the acceptance, at any time, by the town, of such road or any part thereof.

SECTION 1293. Whenever any turnpike, gravel or plank road or any portion thereof shall have been abandoned by the owner or owners thereof neglecting to make repairs and collect tolls upon the same for the period of sixty days, such road or any portion thereof so abandoned, shall be deemed a public highway; and the supervisors of any town in which such road or any portion

(a) A town which would be chargeable with the damages for land taken for a highway under an order of the county board, may object that the order was void because of a failure of the board to acquire jurisdiction, and that the land for which compensation is sought has never been taken for public use, and consequently that the town is not liable therefor. [*Damp v. Town of Dane*, 29 Wis. 419.]

thereof may be situated shall immediately after such abandonment as aforesaid, cause the same to be put and kept in repair.

SECTION 1294. (As amended by ch. 102, Laws 1885.) Every public highway already laid out, or which shall hereafter be laid out, shall cease to be considered a public highway at the expiration of four years from the time when it was so laid out, except such parts thereof as shall have been opened, traveled or worked within such time, and all public highways now in use, heretofore laid out and established pursuant to law, and all roads not recorded, which shall have been or shall be used and worked as public highways, ten years or more, shall be deemed public highways, except that roads and bridges built upon the bottoms and sloughs of the Mississippi river, in this state, by citizens or municipalities of any other state, shall not become legal highways, or a charge upon the town in which they are situated, unless upon petition they are legally laid out by the supervisors of such town; and in case any such laid out highways shall not have been fully and sufficiently described or recorded, or if such records have been lost or destroyed, the presumptive evidence shall be that the same were originally laid out of the width of four rods(a).

Highways not opened, etc., for four years cease.

4 Wis. 408.
13 Wis. 159.
18 Wis. 668.
19 Wis. 90.
23 Wis. 547.
23 Wis. 357.
25 Wis. 99.
28 Wis. 148.
40 Wis. 402.

Non recorded used etc., ten years to be deemed highway.

Exceptions.

(a) The use of the land by the public for more than twenty years, and the acquiescence of the owner in such use, is *conclusive proof of dedication*. [*Lemon v. Hayden*, 13 Wis. 150.]

Section 1294 is a statute of limitations, under which the owner of land loses his right to compensation, if it has not been made, by acquiescence in the public user for the period prescribed. [See *Tomlinson v. Wallace*, 16 Wis. 224.]

Under section 85, chap. 19, R. S. 1838, where, for ten years since the enactment of that statute, work has been done and money expended on a road under the direction of the overseers of highways, this is sufficient adverse public user to establish it as a highway without proof that the action of the overseers was known to and approved by the town supervisors. [*Blute et al. v. Scribner*, 23 Wis. 357.]

A continuous and uninterrupted use of land as a highway during the period limited in sec. 85, creates a prescriptive right in favor of the public. Such use for the ordinary purposes of travel must be presumed, in the absence of proof to the contrary, to have been under claim of right; and it seems that it is not necessary to show that the road was worked, or attached to a road district, or that any other act was done by the town authorities recognizing it as a highway. [*Hanson v. Taylor*, 23 Wis. 547.]

[Section 85 mentioned in the above corresponds with section 1294 of the text.]

A highway may be created by dedication, and proved by parol as well as by an instrument in writing or matter of record, even where it has not by lapse of time and by use of the public become a highway under the statute of limitations; but to constitute dedication, it must clearly appear that the highway had been used as such with the assent of the owner of the land. [*Connehan v. Ford et al.* 9 Wis. 248.]

Acceptance by the officers of the town is not necessary to constitute a highway by dedication, but travel by the public to such an extent, and for such a length of time, as to show that the public convenience and accommodation require the road, is sufficient; and this time may be less than ten years. [*Buchanan v. Curtis et al.* 25 Wis. 99.]

A plat, and the conveyance of lots by the proprietors with reference to it.

Discontinuance
of certain high-
ways.

SECTION 1294a. (Ch. 253, Laws 1882.) Any highway in this state which shall have been or may hereafter be entirely abandoned as a route of travel, and on which no highway tax has been expended for five years, shall be considered legally discontinued, and the land of said highway shall revert to the owners of the land through which the same passed.

Highways
opened and
worked for
three years de-
clared such so
far as opened
and worked.

6 Wis. 377.
9 Wis. 240.
11 Wis. 432.
16 Wis. 224.
22 Wis. 215.
27 Wis. 469.
30 Wis. 436.

SECTION 1295. All highways which shall have been laid out by the supervisors of any town, the board of supervisors of any county, or by a committee thereof, or by commissioners appointed by the legislature, to lay out a state road, and recorded, any portion of which shall have been opened and worked for the term of three years, shall be deemed to be and are hereby declared to be legal highways so far as they have been so opened and worked; notwithstanding the law may not have been in all respects complied with, in laying out the same (a). The making of an order laying out any highway by the proper officers, and filing the same in the office of the town clerk of the town in which such road is situated, shall be deemed a recording of such highway, within the meaning of this section.

Title to revert
on discontinu-
ance of high-
way.

SECTION 1296. When any highway shall be discontinued, the same shall belong to the owner or owners of the adjoining lands; if it shall be located between the lands of two or more different owners, it shall be annexed to the lots to which it originally belonged, if that can be ascertained; if not, it shall be equally divided between the owners of the lands on each side thereof.

Papers rela-
tive to laying
out, etc., where
filed.

SECTION 1297. All applications, certificates, and other papers relating to the laying out, altering, widening or discontinuing any highway shall be filed in the office of the town clerk as soon as the supervisors have decided thereon.

constitute a valid dedication to the public use, of the streets and ways marked on the plat, binding upon such proprietors, without any formal acceptance of such dedication by the public authorities. [*Williams v. Smith et al.* 23 Wis. 594, and *Pettibone et al. v. Hamilton et al.* 40 Wis. 402.]

Where there is a continuous line of road, used as such by a portion of the public, if work has been done thereon, under the direction of the proper town authorities, from time to time for more than ten years—although not upon that portion of the road constituting the premises in dispute, nor even in the particular road district where those premises are situated—this demonstrates a public user of the whole line of road, and that the same is a public highway. [*Scribner et al. v. Blute et als.* 28 Wis. 148.]

(a) A highway laid out without compliance with the statute, will not become a legal highway under the three years' limitation of section 1295, so as to justify the overseer in removing an obstruction at any particular point, unless it has been opened and worked at the point of such obstruction for three years after such laying out. [*Dolphin v. Pedley*, 27 Wis. 469.]

SECTION 1298. The order of the supervisors, or supervisors and commissioners, laying out, widening, altering or discontinuing any highway, and the order of any commissioners reversing or affirming the same on appeal, and the record, or a certified copy thereof, shall be presumptive evidence of the facts therein stated, and of the regularity of all the proceedings prior to the making of such order (a).

Effect of order laying out, etc. as evidence.

2 Wis. 129.
6 Wis. 184.
16 Wis. 224, 519.
18 Wis. 537.
21 Wis. 32.
29 Wis. 419.

SECTION 1299 (as amended by ch. 273, Laws 1881). The several supervisors and commissioners authorized to lay out roads, under the provisions of this chapter, are also authorized to administer and certify to any oaths or affidavits required by the provisions of this chapter.

Authorized to administer oath.

TO SECURE SUITABLE HIGHWAYS AND STREETS TO FAIR GROUNDS AND CEMETERY ASSOCIATIONS.

SECTION 1299a (ch. 168, Laws 1882). 1. Whenever any cemetery association, or industrial or agricultural association owning land in any city, village or town in this state shall file a petition with the clerk of such city, village or town, setting forth that such association owns land in such city, village or town, describing it, and used or intended to be used by such cemetery association for the burial of the dead or used or intended to be used by such industrial or agricultural association for fair grounds, and to which there is no laid out highway or street, and praying that such city, village or town shall lay out a street or highway from the nearest street or highway to such land, the common council of such city, trustees of such village, or supervisors of such town, shall make out a notice, which shall be served on the owners or occupants of the land through which the proposed highway or street is to be laid, which notice shall contain a copy of the petition filed as aforesaid, and the time when said common council of said city, trustees of such village or supervisors of such town shall meet to take

In regard to cemetery associations.

(a) The order of the supervisors laying out or altering a highway is competent evidence of the facts therein stated, and is presumptive evidence of the regularity of all proceedings prior to making the same, but it is not conclusive evidence, and it may be shown, in order to defeat the highway, that the facts stated in the order are not true, or that the prior proceedings were not regular. [See *Roehrborn v. Schmidt*, 16 Wis. 519. *Williams v. Mitchell*, 49 Wis. 284.]

action upon said petition, which shall be within ten days after the service of such notice. If the common council of such city, the trustees of such village, or the board of supervisors of such town shall ascertain that such association owns land in such city, town or village which is used or which is hereafter to be used for the purposes mentioned in section one of this act, and that there is no street in said city, village or highway in said town leading to the same, that they shall make an order within five days after the time they have met to take action on said petition for the purpose of establishing by the verdict of a jury the necessity of taking for public use the property of the owners or occupants of the land through which the proposed highway or street is to be laid.

Sum to be deposited.

2. Such order shall require such petitioners to deposit with the treasurer of such city, village or town such sum as may be deemed necessary to pay the costs and expenses of such proceedings, and all action in regard to said petition shall be suspended until such order is complied with. Whenever such deposit shall be made, a further order shall be made fixing a time and place, not less than ten days, when and where a jury will be empanelled for the purpose of establishing the necessity of taking such property. Notice of such time and place shall be served upon the person or persons occupying such land, if any there be, not less than six days before the time so fixed, or if any portion of said land shall not be in the actual occupancy of any person, then such notice, which shall contain a description as near as may be, of the premises to be taken, shall be published in some newspaper of general circulation, to be designated in such order, for three weeks successively, at least once in each week; such notice shall state that at the time and place therein named a jury will be empanelled in the manner provided by this act, for the purpose of establishing the necessity of taking for public use the property described in the petition.

Selection of jurors.

3. At the time and place specified in such notice, the county judge of the county, the municipal judge of such city, the president of such village or the chairman of supervisors of such town shall issue his precept directed to the sheriff of

the county or to any of his deputies, naming such deputy, or to any constable of such city, village or town, naming him, which precept shall direct such officer to write down the names of thirty-six freeholders of said county, who are qualified by law to serve as jurors in the circuit courts of the state, and to return the same to him. Such officer shall first be sworn to perform the duties required of him, according to the best of his abilities, without partiality to either party.

4. Such officer shall immediately write down such names and deliver the list of them to the officer who issued such precept. And from such list of names each party, personally or by attorney, commencing with the petitioner, shall strike out alternately twelve names, and in case of the absence of either party or his refusal to strike out, the officer who issued such precept shall appoint some other person to strike out twelve names.

List to be delivered to officer.

5. The officer who issued such precept shall then issue a venire requiring the officer to summon the twelve men whose names remain upon the said list of names, to appear at a time and place mentioned therein, to make a jury for the purpose of establishing the necessity of taking for public use the property described in the petition for such highway. If any of said persons shall fail to attend, other persons may be drawn in the same mode to fill the vacancies, and the proceedings may be adjourned from time to time for that purpose.

Shall issue venire.

6. When such jury shall appear, they shall take an oath before the officer who issued such precept, that they will faithfully and impartially discharge the duties and trusts imposed upon them, which oath shall be filed with the clerk of the city, village or town.

Shall take an oath.

7. Whenever said jury shall be empanelled and sworn, the said municipal judge, president of the village, or chairman of the town board, shall issue his precept directed to the jurors so empanelled and sworn requiring them within ten days to view the premises to be specified in said precept, and to make return to him under their hands, whether in their judgment it is necessary to take said premises for public use, as specified in said petition. Said jurors shall proceed to view said premises, at some time to be fixed by them, of

Shall issue a precept to jurors.

which they shall give due notice to both parties and shall hear such testimony as may be offered by any party interested. After viewing the premises and hearing such testimony as may be offered, the jury shall agree upon their verdict which shall state whether in their judgment it is necessary to take the property described in the petition for public use, and shall return the verdict to the officer who issued such precept.

Shall call meeting of common council.

8. When such verdict is returned to the officer who issued such precept, he shall as soon as may be, call a meeting of the common council of the city, trustees of the village or supervisors of the town as the case may be, to whom he shall deliver such verdict, and the said common council, trustees or supervisors as the case may be, shall immediately make an order, if in their judgment the public good requires it, laying out a street or highway from the nearest street or highway to such cemetery or fair ground, not less than three nor more than four rods in width, and in said order laying out said highway as aforesaid they shall appoint three disinterested freeholders of the county who shall assess adequate damages to the owners of the land through which said street or highway is laid.

Open streets.

9. The street commissioners of such city or village, or the pathmaster of such town, after the order laying out such street or highway has been filed with the clerk of such city, village or town, shall forthwith open the street or highway mentioned and described in said order; provided such associations shall have paid into the treasury of such city, village or town the damages so awarded under this act.

If dissatisfied with damages awarded.

10. If the party through whose land the said street or highway is laid, or the common council of such city, trustees of such village, or supervisors of such town, shall be dissatisfied with the damages awarded under this act, either of them may appeal to the circuit court of the county in which such street or highway is situated, by making out a notice of appeal and a bond to the opposite party, with at least two sureties, conditioned to pay all costs and damages which may be incurred, in case of their being unsuccessful on such appeal, and filing both such notice and bond with the clerk of such city, village, or town, and pay-

ing to him two dollars for his fees in making his return of all the proceedings therein, to the clerk of the circuit court of that county, provided the pendency of such appeal shall not impair the right of the public to use and occupy such highway or street for the purposes of travel, but the public right to use and occupy the same for such purposes shall exist to the same extent as though such appeal had not been taken until such appeal is decided.

11. The clerk of such city, village or town within ten days after the notice of appeal and bond has been filed in his office and the sum of two dollars has been paid him as mentioned in this act, shall transmit all papers pertaining to said appeal to the clerk of the circuit court of said county. Upon the papers being filed in the office of the clerk of the circuit court the appeal shall be considered an action pending in court, subject to a change of the place of trial and appeal to the supreme court as other actions, and shall be entered by the clerk upon the records of the court by setting down the owner or owners of the land for which such award was made and who are parties to the appeal as plaintiff and the city, town or village as defendant. Such appeal shall be tried by jury, unless a trial by jury is waived by both parties, and costs shall be allowed to the successful party on such appeal; and if in favor of the plaintiff, be added to the amount of the verdict; and if in favor of the defendant, be deducted therefrom, and judgment shall be rendered thereon according to the rights of the parties.

Action pending
in court.

COUNTY ROADS.

SECTION 1300. The county boards of supervisors, in their respective counties, are authorized to lay out highways, extending through or into two or more towns, or along or near the town line between two or more towns in their county, and to widen, alter or discontinue state roads, and any highway or part thereof, laid out by such board (but not to discontinue any state road, or part thereof, unless such road is wholly within their

County boards
to lay high-
ways, when,
etc.

29 Wis. 419.

NOTE.—The forms heretofore given for proceedings in laying out of highways can readily be adapted to this chapter.

county), upon the petition (1) of not less than thirty resident freeholders of their county, and not less than fifteen from each town in which such highway, or any part thereof, shall be proposed to be laid out, or from each town in which the part of such road or highway proposed to be widened, altered or discontinued shall be. All the powers herein mentioned may be exercised by a committee of not less than three members of the board, duly appointed for that purpose. The county board may, in any case, adopt as a part of any such highway, any highway, or part thereof, previously laid by town supervisors. And whenever the supervisors of adjoining towns in different counties cannot agree in laying out a continuous highway extending from one town to the other, and the supervisors of one town shall lay out a road up to the line of such adjoining town, the county board of the county in which such latter town lies may, upon like petition (2), lay

(1) *Form of Petition to County Board to Lay Out, etc., a Highway.*

To the county board of supervisors of — county:

We, the undersigned, residents and freeholders of said county of —, residing in the towns therein, as stated hereunder opposite to our respective names, do hereby petition you to lay out, (*widen, alter or discontinue*) a highway, extending through (*or into*) the towns of — and — (*or, along or near the town line between the towns of — and —*), in said county, as follows, to wit: Commencing at — in the town of — (*or, at a point (designating it) on the town line between the towns of — and —*), thence running (*describe the highway and the lands over which it may pass. See form under section 1265*).

Dated this — day of —, 18—.

A. B., residing in the town of —.
C. D., " " " " —.

NOTE — Care must be taken to give the residence of each signer.

(2) *Form of Petition when Town Supervisors Cannot Agree.*

To the county board of supervisors of — county:

Whereas, the supervisors of the town of —, in said county, and of the town of — in the county of —, which towns adjoin each other, cannot agree in laying out a continuous highway, extending from one of said towns to the other; and

Whereas, the supervisors of the said town of — have duly laid out a road in their said town up to the line of the said town of —, as follows, to wit: (*describe as in order laying out same.*)

Now, therefore, we, the undersigned, residents and freeholders of said county of —, residing in the towns therein, as stated opposite to our respective names hereunder, do hereby petition you to lay out a highway in the town of —, from

out such road in continuation, as the public interests may require.

SECTION 1301. Upon receiving any such petition, the county board shall give notice (1) of the time and place when they will meet to decide thereon, which notice shall be published in some newspaper published in the county, for at least three weeks previous to the time so fixed, and in case there be no newspaper so published, by posting such notice in at least three public places in each of such towns, at least three weeks before the time so fixed; and if such board shall appoint a committee to act for them, such notice shall state the fact, and the notices shall be signed by such committee, otherwise by the chairman of the board.

Notice how given.

54 Wis. 531.

SECTION 1302 (as amended by ch. 85, Laws 1883). At the time and place mentioned in such notice, and upon proof by affidavit of the publication, or posting thereof, said board, or its duly appointed

Proceedings by board or committee.

54 Wis. 531.

said town line in continuation of said road so laid out in said town of —, as follows, to wit: (*describe same, and lands over which it may pass. See form under section 1285.*)

Dated this — day of —, 18—,

—, residing in town of —,
—, “ “ —,
—, “ “ —.

NOTE.—The foregoing petition should be signed by not less than thirty resident freeholders of the county; fifteen of whom, at least, reside in the town in which the highway is proposed to be laid out.

(1) *Form of Notice by County Board of Meeting to Decide upon Petition to Lay Out, etc., a Highway.*

County of —, ss.

Petition having been duly made to the county board of supervisors of said county of — by thirty (*or more*) resident freeholders of said county, fifteen of whom reside in the town of — and fifteen in the town of — (*and so on*), for a highway to be laid out (*or altered, etc.*) extending through (*or into*) the towns of — and — (*or, along or near the town line between the towns of — and —*), in said county, as follows: (*set forth as in petition, fully*). (*If a committee have been appointed, say: and the undersigned (three) members of said county board, having been duly appointed a committee, with full powers to act in the premises:* Notice is therefore hereby given that we, the said county board (*or, we, the said committee*), will meet at —, in the town of —, in said county, on the — day of —, 18—, at — o'clock in the — noon, to decide upon such petition.

Dated this — day of —, 18—,

—, Chairman of County Board,
(*or, —, —, —, —, —*), } Committee.

committee, shall proceed personally to examine such highway, and hear any reasons that may be offered by parties interested therein; and for that purpose may adjourn, as town supervisors are authorized to do in similar cases; if a committee have been appointed, they shall report their determination to the board, and their award of damages for lands taken. Upon the receipt of such report, or, when the board shall act without a committee, upon their determination, they shall make an order (1) laying out, altering, widening

(1) *Form of Order of County Board Laying Out, etc., a Highway.*

STATE OF WISCONSIN }
County of ———. } ss.

Whereas, upon the petition of thirty (or more) resident freeholders of said county, fifteen (or more) of whom reside in the town of ———, and fifteen (or more) reside in the town of ———, (and so on), for the laying out (or widening, altering or discontinuing) of a highway, extending through (or into) the towns of ——— and ——— (or along or near the town line between the towns of, etc.,) in said county, commencing at a point in the town of ———, thence running (as in petition), we, the undersigned, county board of supervisors of said county (if committee appointed, say: did duly appoint L. M., O. P. and R. S., three members of said board, as a committee, with full power to act in the premises, and) did on the ——— day of ———, 18—, make out a notice duly signed, and fix therein a time and place at which we (or the said committee) would meet to decide upon said petition; and did give notice of the time and place of such meeting, by publishing the notice so made out, for three weeks previous to the time fixed therein, in the ——— a newspaper published in said county (or, by posting said notice in (at least) three public places in each of said towns, three weeks before the time so fixed, there being no newspaper published in said county).

And, whereas, we, the said county board (or, the aforementioned committee), did meet on the ——— day of ———, 18—, at ——— o'clock in the ——— noon of said day, at ——— (here state place as in notice), it being the time and place fixed therefor in said notice, and did then and there proceed personally to examine such highway, and did hear all reasons that were offered by parties interested therein, and (if any adjournment was made, say): having adjourned said meeting to the ——— day of ———, 18—, at ——— o'clock in the ——— noon, at ——— (designate place), of which adjournment, when made, public notice was duly given, and notice thereof was forthwith filed in the office of the county clerk, and in the office of the town clerk of each of the aforementioned towns, the said county board (or, the said committee) did again meet at the adjourned time and place aforesaid, and having made further examination in the premises, and heard all further reasons that were offered by parties interested in said highway, ¶ did decide upon said petition, and did determine to lay out (widen, alter or discontinue) said highway as hereinafter set forth:

(When committee act, say: and the said committee having

or discontinuing such highway, or refusing so to do, which shall be signed by the chairman and county clerk, and filed and recorded in the county clerk's office. When they shall lay out, alter, widen or discontinue a highway, they shall incorporate in the order a description thereof, and may cause when necessary an accurate survey to be made for that purpose, and shall also cause a copy of such order to be filed in the office of the town clerk of each town, in which any part of the highway, laid out, altered, widened or discontinued lies, within ten days after making such order. And any person who shall consider himself aggrieved by such determination refusing to lay out, alter, widen or discontinue such highway, may appeal therefrom in the same manner, and subsequent proceedings shall be had thereon, the same as provided by preceding sections of this act, in cases where the town board of supervisors refuse to lay out, alter, widen or discontinue any highway.

Order, how made, what to contain, where filed, etc.

SECTION 1303. The damages sustained by any person, through whose land any such highway shall be laid out, altered or widened, may be ascertained by agreement (1) between said county board, or its committee, and such owner. Every such agreement shall be in writing, signed by such owner and the chairman of the board, or its committee, and filed in the office of the county clerk, and shall bar such owner and all persons claiming under him from all further claim for damages. In case of failure to agree upon such damages, the same shall be assessed

Damages, how ascertained.

54 Wis. 581.

duly reported their said determination, and their award of damage for lands taken for such highway.) Now, therefore, pursuant to said petition, we, the said county board of supervisors, do hereby order and determine (*proceed as in form under section 1269, from the**).

Made and signed by us this ——— day of ———, 18—.

_____, Chairman of County Board.

_____, County Clerk.

NOTE.—If the decision be against the application, the order will be: Did decide upon said petition, and did determine not to lay out (etc.) the highway petitioned for (and if such be the fact, add): and the said committee having duly reported their determination against said petition, now, therefore, we, the said county board of supervisors, do hereby order and determine that the petition for the laying out (or widening, etc.) of said highway, be and the same is hereby refused and denied.

(1) *Form of Agreement, see Section 1270.*

(1) by said county board, or by its committee. The damages assessed for any parcel of land so taken shall be paid by the town in which the same is situated, or by such town or any other town or towns, in such proportion as the county board shall direct (2), at the time of making the

(1) *Form of Assessment of Damages by County Board, or its Committee.*

We, the undersigned, county board of supervisors of the county of _____ (or, committee of the county board, etc., duly appointed for that purpose), having, upon due application therefor, determined to lay out (*widen alter*) a highway, as follows: (*describing it*), and not being able to agree with the following named owners of lands through which said highway will be laid out (or, etc.) as to the amount of damages sustained, or to be sustained by them severally in consequence thereof, having applied to each of said owners for that purpose, and endeavor to make such agreement, have assessed such damages as follows, to wit:

To A. B., on (*describe lands*), we have assessed, etc., (*proceed as in form under section 1270*).

Made and signed this _____ day of _____, 18—.

_____, } *County Board,*
_____, } *or Committee.*
_____, }

(2) *From of Order of Apportionment under Section 1308.*

County of _____.

Whereas, upon petition duly made, the county board of supervisors of said county did, by an order dated the _____ day of _____, 18—, lay out (*widen or alter*) a highway extending through (or, into, or along, or near the town line between) the following towns in said county, to wit: (*name the towns*); and whereas, the damages sustained (or, to be sustained) by the owners through whose lands the said highway is laid out (*or widened, etc.*) have been ascertained according to law, and amount in the aggregate in the said town of A _____ to the sum of _____ dollars, and in the said town of B _____ to the sum of _____ dollars (*and so on*); and whereas, the said county board deem certain other towns in said county benefited by the laying out (*widening, etc.*) of said highway, to wit: the towns of C _____ and D _____, and that the said last-named towns ought of right to pay a portion of the damages so ascertained.

Now, therefore, the said county board of supervisors do hereby order, determine and direct that the said town of A _____ shall pay the damages so ascertained to lands situated therein, except the damages to the _____ (*describe land*), ascertained by agreement with A. B., the owner thereof, to be the sum of _____ dollars, of which sum the said town of A _____ shall pay one third, and the said town of B _____ shall pay two thirds; and excepting also the damages to the _____ (*describe lands*), for which there was awarded to C. D. the sum of _____ dollars, of which damages the said town of A _____ shall pay one half, and the said town of C _____ one fourth, and the said town of D, one fourth, (*and so continue,*

order, laying out, altering or widening such highway, if the county board shall deem any other town or towns benefited thereby. A copy of every agreement for damages and of the assessment therefor shall be filed with the town clerk of each town liable for the payment of the same or any portion thereof, within ten days after making the order laying out, altering or widening such highway.

Agreement or
assessment,
where filed.

SECTION 1304. (As amended by Ch. 194, L. 1879, and Ch. 336, L. 1883.) Appeals and second appeals from such award of damages may be taken, heard and conducted in all respects as appeals taken from similar awards by town supervisors and with the same right of a second appeal; but whenever the total amount of damages chargeable to any one town consequent upon any one order for laying out or altering a county road shall be fifteen hundred dollars (\$1,500) or more, such county road shall not be opened or altered, nor liability for damages exist, unless such order be approved and such highway be accepted by a majority of the qualified electors of such town liable to such damages voting thereon at the next annual town meeting or some special town meeting called therefor. And every town chargeable with such damages or any part thereof, when finally settled, shall be liable for the payment of the same, and the same shall be collected and paid as provided in section 1291.

54 Wis. 531.

SECTION 1305. Whenever, in any town in this state, there shall be less than two supervisors, any petition for laying out, altering, widening or discontinuing highways in such town authorized to be made by this chapter to town supervisors, may be made to the county board of supervisors, and such county board shall thereupon appoint a committee of three of its members, who shall further proceed upon such petition, in the same manner and with the same powers in every respect, as supervisors of such town might do.

County board
may lay town
roads, when.

54 Wis. 531.

SECTION 1306. For all services performed in

stating with particularity, as above, the terms or the apportionment).

Made and signed by us, this — day of —, 18—.

County Clerk.

Chairman County Board.

Compensation
to county
board, etc.

54 Wis. 581.

laying out, widening, altering or discontinuing any such highway, each member of said county board or of its committee, shall receive the sum of two dollars per day for each day necessarily employed, which, together with the necessary expenses of surveying any such highway, shall be paid out of the county treasury.

County high-
ways how open-
ed, etc.

51 Wis. 581.

SECTION 1307. Highways so laid out by county boards shall be opened and repaired in the respective towns in the same manner as other highways; but if the town board neglect or refuse to open any such highway, the county board shall have the same power to open the same that such town board has by law.

County boards
may adopt and
repair roads
and levy road
tax.

47 Wis. 308.

51 Wis. 646.

51 Wis. 663.

54 Wis. 528.

54 Wis. 583.

SECTION 1308. The several county boards in their respective counties may adopt any main traveled highways, or parts of such highways as county roads, and shall thereafter cause the same to be kept in good repair, as long as they remain under their control; or said board may designate any such highways, or parts of such highways, for the purpose of expending money in their repair, without adopting them as county roads, or assuming any responsibility for any injury caused by any insufficiency or want of repair therein, unless caused by the neglect of their officers. Any such board may annually levy on the taxable property of the county, a county road tax, not exceeding eight thousand dollars, which shall be expended under their direction in making culverts, grading, graveling, ditching, or otherwise improving such highway.

County road
tax, how ex-
pended.

47 Wis. 308.

SECTION 1309. The county board at their annual meeting shall make all necessary provisions for the expenditure of such county road tax, and the discharge of their duties hereunder; they may make contracts therefor, and appoint road commissioners with appropriate powers as they shall designate. They shall require sufficient bonds from all persons so contracted with or appointed for the due execution of such contracts, or the performance of the duties conferred upon them; and no claim for any work done under such contract shall be audited, or paid, until a committee of three, one of whom shall be the supervisor of the district or town in which the work was done shall have viewed the same, and reported that

Claim for work,
when paid.

such work has been done in all respects according to the contract.

SECTION 1310. The county board may at any time cause the whole or any part of any county road built or completed by the county, to revert to the sole control of the town, city or village, in which the same may be situated, by filing with the clerk thereof, a written or printed notice (1) that such road or part of road, designating the same, will so revert at the time specified therein, which shall not be less than thirty days. At and after the time so fixed, such road or part of road shall be under the sole control of the proper officers of the town, city or village, and shall be by them kept in good repair, and if deemed necessary the proper town board, village board or common council, may annually levy a special tax, sufficient for that purpose.

County board may assign roads to towns, etc.

47 Wis. 303.

SECTION 1311. If any town, city or village shall refuse or neglect to open and keep in repair any state or county road therein, or any part of such road and the county clerk shall receive a written notice (2) of such neglect, signed by at least six freeholders of the county, he shall immediately notify the proper town chairman, mayor or village

Proceedings where towns, etc., neglect to repair county and state roads.

47 Wis. 303.

(1) *Form of Notice that County Road will Revert to Town.*

To the town clerk of the town of ———, county of ———:

Pursuant to an order (or resolution) of the county board of ———, dated on the ——— day of ———, 18—, you are hereby notified that the following described county road, built or completed by said county, (*designate the road or part*) will, on the ——— day of ———, 18—, revert to the town of ———, in which said road is situated, and thereafter will be under the sole control of the proper officers thereof, to be by them kept in good repair.

Dated this ——— day of ———, 18—.

—————, Chairman County Board.

—————, County Clerk.

(2) *Form of Notice of Neglect of Town to Open or Repair State or County Road.*

To ———, county clerk of ——— county:

The undersigned, freeholders of said county of ———, do hereby notify you that the town of ———, in said county, refuses (or neglects) to open and keep in repair the following state (or county road) therein, namely: (*designate the road or part*),

Dated this ——— day of ———, 18—.

—————,
—————,
—————,

president, to cause such road to be opened or repaired within a certain number of days, not less than thirty, to be stated in such notice (2), and that if said road be not opened or repaired, the same will be opened or repaired by the county, and the expense thereof charged to such town, city or village. If such road shall not be so opened or repaired, the chairman of the county board, or county road commissioners in those counties having such commissioners, shall cause the same to be opened or repaired; and he, or they, shall keep an accurate account of the expense of opening or repairing the same, and when audited and allowed by the county board it shall be charged to such town, city or village, and be added by the county clerk to the next county tax apportioned thereto, and collected therewith.

STATE ROADS.

State roads,
how established,
etc.

SECTION 1312. All state roads authorized by law to be located and established, shall be viewed, surveyed and established, and return made thereof within two years from the passage of the act by which such road is authorized, in the manner hereinafter provided, unless otherwise specially provided by law.

Commissioners
to give notice,
and locate state
road, etc.

SECTION 1313. The commissioners appointed to locate and establish any state road shall, at least twenty days before they proceed to locate the same, cause copies of the special law by which they act, together with a notice signed by a ma-

(2) *Form of Notice to be Given by County Clerk under Section 1311.*

COUNTY OF ———, }
Town of ———, } ss.

To ———, chairman of town board of ———:

Written notice, signed by six (or more) freeholders of said county of ———, having been received by me, that said town of ———, refuses (or neglects) to open and keep in repair the following state (or county) road therein, viz: (describe road as in notice): You are therefore hereby notified to cause such road to be opened and repaired within ——— days (not less than thirty) from the date hereof, and if the same be not done within that time, the said road will be opened and repaired by said county of ———, and the expense thereof charged to said town.

Dated this ——— day of ———, 18—.

County Clerk.

jority of them, setting forth the time and place said commissioners will meet to locate such road, to be posted up in three public places in each town through which such road will pass, or run into; and at the time and place mentioned in such notice, they shall meet and proceed to locate such road, and for that purpose they shall cause the same to be correctly surveyed and marked, the whole distance, by setting stakes and by blazing, or otherwise.

SECTION 1314. The commissioners and surveyor of each such road shall make a certified return of the survey and plat of the whole length of said road, specifying in said return the width, depth and course of all streams, the position of all swamps and marshes, and the face of the country generally, noting where timber and where prairie, and the distance said road shall have been located in each county; which return and plat shall be signed by a majority of the commissioners and surveyor of said road, and forwarded to the secretary of state within sixty days after the view and survey of the same, and be by him recorded; they shall also, within said sixty days, deposit in the office of the county clerk of each county through which said road shall be laid, a return and plat as aforesaid, of so much of said road as shall be laid out and established in said county to be recorded.

Commissioners and surveyors to make return and where to file the same.

SECTION 1315. All damages occasioned by laying out and opening any state road shall be paid by the several counties in which the same may be located; and every person claiming any such damages shall present his claim therefor to the county board of the county in which his lands are situated; and such board shall act upon such claims and allow the same, or such part thereof as they shall deem just; and any person whose claim is disallowed in whole or in part, may appeal to the circuit court as in other cases. No such damages shall be paid until such road shall be opened through the lands for which the same are claimed.

Damage by whom allowed; when paid.

SECTION 1316. All state roads shall be opened and worked as other highways by the several towns in which the same are or may be located.

State roads, when opened and worked.

SECTION 1317. The commissioners and other persons employed in laying out such road shall be

47 Wis. 312.
54 Wis. 532.

County to pay
commissioner
and surveyor.

State not lia-
ble.

entitled to such compensation from the different counties, through and into which such state roads may be located, as the several county boards may deem just, to be paid out of the county treasury. The state shall not be liable for any expenses or damages, unless, expressly provided by the law directing the laying out of any such state road.

BRIDGES.

Supervisors
may levy tax
for.

16 Wis. 614.
41 Wis. 28.
58 Wis. 670.

SECTION 1318. The supervisors of any town are authorized to levy a tax on all the taxable property of the town, to be placed on the tax roll, and collected as other taxes, for the purpose of rebuilding, repairing and maintaining suitable and permanent bridges and causeways across any river, stream, creek, swamp or marsh in such town, whenever they shall deem it necessary for the public convenience; but no such tax shall be levied, except with the assent of all the supervisors, and shall not exceed the sum of three hundred dollars for any one bridge or causeway; and not more than one such tax shall be so levied and collected in any one year (a).

County board
may levy
bridge tax.

41 Wis. 28.
47 Wis. 301.

SECTION 1319. (As amended by ch. 126, L. 1879, 315, L. 1881, and 187, L. 1885.) Whenever the town board of supervisors of any town shall file its petition with the county board of supervisors of the county in which such town is situated, setting forth the fact that said town has voted to construct or repair any bridge or bridges, wholly or partly within such town, designating, as near as may be, the location of such bridge or bridges, and further stating that such town has provided for the payment of one half of the cost of such construction or repairs, and that the cost of said bridge or bridges or repairs exceeds one fourth of one per centum of all the taxable property in said town, according to the last equalized valuation; the said county board shall appropriate the other half of such cost, and cause such sum to be levied upon the taxable property of the county as will, with the amount provided by said

(a) The power to decide upon the necessity of repairing bridges, causeways, etc., is vested by section 1318 in the supervisors of the towns, and their judgment upon the subject will not be controlled by *mandamus*. [*State ex rel. Winslow v. Supervisors of Mount Pleasant*, 16 Wis. 614.]

It is no part of their official duty to build or repair bridges at their own expense, or under circumstances where they cannot directly charge the town with the cost. [*Id.*]

town, be sufficient to defray the expense of erecting or repairing such bridge or bridges so petitioned for, and such money, when collected, shall be paid out on the order of the chairman of the county board and county clerk, whenever the said town shall notify them that the work has been completed and accepted. The county board shall, at the time of acting upon such petition, designate two of its members who shall act as its commissioners, and who shall co-operate with the supervisors of such town, and the supervisors of such town and said commissioners from the county board, shall have full charge and authority to act in the letting, inspection and acceptance of the work; provided, however, that nothing in this act contained shall be construed to prohibit any county from constructing or repairing any bridges in such county if it shall so desire, and in case the whole of the cost of the construction or repairs of any bridge or bridges is to be borne by any county, or in case any county shall arrange with such town so as to assume and have exclusive charge of such work, then the county board may direct the letting, inspecting and acceptance of such work in such manner as it may deem proper; provided, however, that nothing in this act contained shall, in any manner, authorize the levy of any tax upon the property in any incorporated city or village, that maintains its own bridges and as to any such cities or villages, this act shall not apply.

Tax how collected and expended.

SECTION 1320. (As amended by chapter 345, Laws 1885.) Any county, town, city or village bordering upon, or through which any navigable or meandered streams run, is authorized to levy and collect a tax in the same manner that other taxes are levied and collected, not exceeding five mills on the dollar, of the last assessed valuation of the taxable property thereof, for the purpose of building or maintaining, or aiding in the building or maintaining a bridge across such stream, or to issue their corporate bonds for such purpose for an amount not exceeding two per centum on such valuation; and any two adjoining towns having a highway on a line between them, crossing such navigable or meandered stream are authorized to levy and collect a tax in the manner above provided for the purpose of build-

1887-C 25
See 70 Wis. 558

61 Wis. 402.

ing or maintaining, or aiding in building and maintaining a bridge across such stream, or to issue their corporate bonds as above provided; but if a tax shall be levied for such purpose in any such county, town or towns, city or village, their bonds for such purpose shall not be issued for an amount exceeding the difference between such tax and two per centum of such assessed valuation.

Bonds issued,
how executed.

SECTION 1321. (As amended by section 2, of chapter 345, Laws 1885.) No such tax shall be levied or bonds issued for the purpose mentioned in the preceding section by any county, town or towns, city or village, unless the question of levying such tax or issuing such bonds shall have been submitted by a vote of a majority of the county, town or village board, or common council of such city, as the case may be, to a vote of the electors of such county, town or towns, city or village, and adopted at an annual election, town meeting, or charter election, or at any election specially called for that purpose by such board or council, and in either case such board or council shall give notice of the submission of such question to the electors, as is required by law to be given of a special election or special town meeting; such vote in every case shall be by ballot, and the proper board or common council shall prescribe the form thereof. The votes shall be canvassed, returned and the results declared as in other elections.

Bonds issued,
how executed.

SECTION 1322. All bonds issued under the two preceding sections shall be executed according to the provisions of section nine hundred and fifty-six, and shall be issued only according to and subject to the provisions of sections nine hundred and forty-three and nine hundred and forty-four.

Fast driving on
bridges, how
prohibited, etc.

SECTION 1323. The supervisors of any town may put up and maintain at the expense of their town in conspicuous places, at each end of any bridge in such town, maintained at the public expense, and the length of the span of which is not less than twenty-five feet, a notice with the following words in large letters: "One" (or some other number not greater than five dollars) "dollar fine for driving or riding over this bridge faster than a walk;" and whoever shall drive or ride faster than a walk on any such bridge, upon which such notice shall have been placed and

shall then be, shall forfeit for every such offense the sum mentioned in such notice, and the chairman of the town board shall sue for and collect all such forfeitures in the name of, and for the use of, the town.

SECTION 1324. The owner of any bridge of like span, kept and maintained wholly for public use, free of toll, shall have the same authority to put up notices thereon, and fix therein like penalties for driving or riding faster than a walk thereon, and may sue in his own name, and for his own use, for any forfeiture incurred by any person violating such notice. On free bridges.

SECTION 1325. Whoever shall willfully injure any bridge maintained at the public expense, or any bridge mentioned in the preceding section, shall, for every such offense, forfeit treble damages, to be collected as provided in the two preceding sections, and may also be prosecuted and punished as provided by law. Penalty for injuring bridges.

TO PROVIDE FOR ATTENDING, MAINTAINING AND KEEPING IN REPAIR DRAW OR SWING BRIDGES THAT MAY BE CONSTRUCTED OVER OR ACROSS THE LINE BETWEEN A CITY AND A TOWN.

SECTION 1325a. (Ch. 130, L. 1882.) 1. Whenever a swing or draw bridge shall have been built upon or across the division line between any town and city in this state, so that a part of such bridge shall be in the town and a part in the city, and the expense of building the same shall have been borne equally by such town and such city, the expense of attending such bridge, and maintaining and keeping the same in repair shall be borne by the town and the city equally. Swing or draw bridge.

2. If either such town or such city shall neglect to provide for or to pay its share of such expense, in any year, or any part of its share, then the other, the town or the city, as the case may be, may provide for or pay such part of such expenses as are not provided for, or paid, as aforesaid, and upon such payment shall be entitled to have and recover of the town or the city in default, as the case may be, all moneys so paid, with interest from the time of paying the same, and in case the town or city so in default shall neglect or refuse, for thirty days after demand, to pay Expense shared.

such sum to the town or city so entitled to the same, such last named town or city shall recover the same with all proper costs and expenses, in an action against the city or town so in default in any court having jurisdiction.

TO AUTHORIZE TOWNS, CITIES AND VILLAGES TO
PURCHASE AND HOLD CERTAIN BRIDGES OR IN-
TERESTS THEREIN.

Town may hold
bridges.

SECTION 1325*b*. (Ch. 155, L. 1882.) 1. It shall be lawful for any town or towns in this state to purchase and hold, either in severalty or in common, any bridge or bridges, and the approaches thereto, or any interest in such bridges and approaches that are or may be legally erected over any stream or river which divides or forms the boundary line between two or more towns. And it shall be lawful for any city or village situated in the same county with any town or towns making such purchase, or in an adjoining county, to unite with the same in purchasing or holding such bridge or bridges in common with said town or towns.

Question shall
be submitted at
special meet-
ing

2. No town shall in any manner, make such purchase until the question of making the same shall have been duly submitted at an annual town meeting of said town, or at a special town meeting called in the manner now provided by law; and a majority of the electors of such town voting at such meeting shall have voted by ballot in favor of making such purchase. In taking such vote the electors voting for such purchase shall vote a separate ballot containing the words: "For the purchase of bridge," and those voting against the same shall vote a ballot containing the words: "Against the purchase of bridge." And no city or village shall join or unite with such town or towns in making any such purchase until the question of so doing shall have been submitted to the electors of said city or village in a manner substantially similar to that herein provided for submitting such question to the electors of towns, or in the manner provided in the charter or act by which such city or village was incorporated for submitting other questions to said electors.

May execute
all contracts.

3. When any town shall have legally voted in favor of purchasing such bridge or bridges, or

any interest therein, the town board of such town shall have power to make and execute all necessary contracts and papers relative to such purchase, and shall have the care, control and management of the same when purchased; and the common council of any city, and the board of trustees of any village, shall, under like circumstances, have a similar power.

4. The qualified electors of any such town shall have the power, at any annual town meeting, or at a regularly called special town meeting, to vote to raise money sufficient for said purchase, or to authorize the town board to issue and negotiate bonds for the purpose of paying for the same; and any city or village joining in said purchase shall have a like power to raise money or issue and negotiate bonds for the same.

May raise money.

5. All acts or parts of acts inconsistent and conflicting with this act are hereby repealed.

OBSTRUCTIONS.

SECTION 1326. Whoever shall obstruct any highway, or fill up or place any obstruction in any ditch constructed for draining the water from any highway, shall forfeit for every such offense a sum not exceeding twenty-five dollars (a); and the overseer of the proper district shall cause such obstruction immediately to be removed.

Penalty for obstructing highways.

13 Wis. 663.
17 Wis. 155.
18 Wis. 265.
21 Wis. 667.
32 Wis. 663.
34 Wis. 675.
35 Wis. 876.
52 Wis. 137.

SECTION 1327. Whoever shall injure any highway by obstructing or diverting any creek, water-course, sluice way, or by drawing logs or timber on the surface of any road or bridge, or by any other act, shall be liable in treble damages, to be recovered by the overseer of highways of the road district within which the injury was done, in his name of office, to be expended by him in the repair of the roads in his district.

Damages to highways, how recovered.

SECTION 1328. If any tree shall fall, or be felled by any person, from any occupied land into any highway, any person may give notice to the occu-

Trees that have fallen into highways, how removed, etc.

(a) It is a general rule of law, that where a highway is unlawfully obstructed, any person who wants to use it may remove the obstruction, and may even enter upon the land of the party erecting or continuing the obstruction for the purpose of removing it, doing as little damage as possible. [Williams v. Fink, 18 Wis. 265.]

Where a road has neither been laid out, nor has become a highway by user, the erection and maintenance of fences and bars across the same by the owner through whose land it runs, indicates an unmistakable purpose on his part to exclude the public travel, and to retain absolute control over the way. [Jones v. Davis, 35 Wis. 316.]

pant of the land from which such tree shall have fallen, to remove the same within twenty-four hours; and if such tree shall not be removed within that time, but shall continue in such highway, such occupant shall forfeit the sum of fifty cents for every day thereafter, until such tree shall be removed; but the amount so forfeited shall not exceed ten dollars for one tree.

Trespasser
obstructing
road, liable, etc.

SECTION 1329. In case any person shall cut down or fell any tree on enclosed land, not occupied by him, so that it shall fall into the highway, unless by the order or consent of the occupant, such person shall pay to the occupant of such land the sum of one dollar for every day the same shall remain in such highway, together with all other damages which such occupant may sustain; but the amount to be recovered shall not exceed twenty dollars for one tree.

ENCROACHMENTS.

Encroachments
by fences, etc.,
how removed.

18 Wis. 663.
19 Wis. 593.
29 Wis. 546.
37 Wis. 85.
42 Wis. 193.
55 Wis. 521.

SECTION 1330. In every case where any highway, lawfully opened, has been or shall be encroached upon by any fence, building or other fixture, the supervisors of the town shall make an order (1) under their hands requiring the occu-

(1) *Form of Order of Supervisors for the Removal of Obstruction in case of Encroachment.*

COUNTY OF ———, } ss.
Town of ———.

Whereas, the undersigned, supervisors of the town of ———, in said county, have ascertained that a certain fence (building, or other fixtures, *describing it*) appurtenant to lands in said town, occupied by A. B., described as follows, to wit: ———, encroaches upon the (*westerly*) side of the highway, leading through (or, by) said land from ——— to ———, which said highway has been lawfully opened, and is ——— rods in width, the (*westerly*) side thereof being upon and according to the following line (*describe the line*), and having ascertained that said fence is within the limits of said highway, and that all the narrow strip or piece of land which lies under said fence (or, under said fence and between the same and the (*westerly*) line of said highway above mentioned, *as the case may be*), is a part of such highway: It is therefore ordered by the said supervisors, that the said A. B. be, and he is, hereby required to remove said fence (or, building, etc.) beyond the limits of such highway, within thirty days from the service upon him of a copy of this order.

Made and signed by us, this ——— day of ———, 18—.

—————, }
—————, } *Supervisors.*
—————, }

pant of the land through or by which such highway runs, and to which such fence, building or fixture shall be appurtenant, to remove the same beyond the limits of such highway within thirty days; every such order shall specify the width of the road, the extent of the encroachment, and the place or places in which the same may be, with reasonable certainty; and they shall cause a copy of such order to be served upon such occupant (a).

SECTION 1331. If the occupant upon whom a copy of such order shall be served shall not deny such encroachment as provided in the next section, and the fence, building or other fixture causing such obstruction, shall not be removed within thirty days after the service of a copy of such order, such occupant shall forfeit fifty cents for every day after the expiration of that time, during which such encroachment shall continue.

Penalty for non-removal.

13 Wis. 663.
19 Wis. 593.
20 Wis. 202.
42 Wis. 188.
55 Wis. 529.

SECTION 1332. If the occupant upon whom a copy of such order shall be served, shall within thirty days after the service thereof, deny such encroachment in writing (1), addressed to the supervisors, or some of them, shall apply to some justice of the peace of the county for a precept (2), which shall be issued by such justice,

Encroachment denied, determined by jury.

14 Wis. 484.
22 Wis. 215.
36 Wis. 308.
42 Wis. 188.

(a) When the owner removes his fence into the middle of the highway, he by so doing commits a nuisance, and it is the duty of the supervisors to cause the fence to be removed summarily. [*Neff v. Paddock et al.* 26 Wis. 546.]

The highway must have been lawfully laid out and opened, to render a person liable to penalty for encroachment upon it. [*State ex rel. Reynolds v. Babcock*, 42 Wis. 188. *State v. Egerer*, 55 Wis. 527.]

NOTE TO SECTION 1326-29. The word "willfully" means being controlled by the will, in contradistinction to reason, and does not include depositing material in the highway in good faith and for a justifiable purpose.

While the public authorities have a right at all times to put a highway in good condition for travel and to keep it in repair, they have no right as against the owner of the land included in the highway to do acts thereon which without contributing to those ends create a private nuisance. If they do, the land owner may abate it. [*State v. Smith*, 52 Wis. 134.]

(1) Form of Denial of Encroachment.

To the supervisors of the town of —:

I, A. B., occupant of the following land, viz.: (describe same), in the town of —, in said county, do hereby deny the encroachment described in the order of the supervisors of said town, dated the — day of —, 18—, a copy of which order was served upon me on the — day of —, 18—.

Dated this — day of —, 18—.

A. B.

(2) Form of Precept to Summon Freeholders in Case of Encroachment.

COUNTY OF —, }
Town of —, } ss.

THE STATE OF WISCONSIN, to any constable in said county,
Greeting:

Application having been duly made to me therefor by the

directed to any constable of the county, commanding him to summon six disinterested freeholders thereof to meet at a certain day and place, and not less than four days after the issuing thereof, to inquire into the premises; and the constable, to whom such precept shall be directed, shall give at least three days' notice to one of the supervisors of the town, and to the occupant of the land, of the time and place at which such freeholders are to meet.

Proceedings before jury.

19 Wis. 593.
42 Wis. 138.
55 Wis. 529.

SECTION 1333. On the day specified in the precept, the jury so summoned shall be sworn (1) by such justice, well and truly to inquire whether any such encroachment has been made as described in the order of the supervisors, and by whom; and the witnesses produced by either party shall be sworn (2) by the justice, and the jury shall hear the proofs and allegations which may be produced and submitted to them; and in case any person summoned as a juror shall not appear, or shall be incompetent, his place may be supplied by a talesman, as in other cases.

If encroachment found, how removed and penalty for neglect.

42 Wis. 132.
55 Wis. 529.

SECTION 1334. If the jury find that any such encroachment has been made by the occupant of the land, or any former occupant thereof, they

supervisors of the town of —, you are hereby commanded to summon six disinterested freeholders of the said county of —, to meet at the dwelling house of —, in said town of —, on the — day of — instant, at — o'clock in the — noon, to inquire whether any such encroachment has been made as is described in the order of the supervisors of said town of —, dated the — day of —, 18—, and by whom, on the highway running by (or, through) the land now occupied by A. B., in said town; and you are hereby directed to give at least three days' notice to one of said supervisors and to said A. B., of the time and place at which the said freeholders are to meet; and you have then and there the names of the freeholders summoned by you, and this precept.

Given under my hand, this — day of —, 18—.

Justice of the Peace.

(1) *Form of Oath of Jurors.*

You, and each of you, do solemnly swear that you will well and truly inquire whether any such encroachment has been made, and by whom, on the highways as described in the order of the supervisors, now in question. So help you God.

(2) *Form of Oath of Witness.*

You do swear that the evidence you shall give in relation to the encroachment on the highway now in question, shall be the truth, the whole truth, and nothing but the truth.

shall make and subscribe a certificate in writing (1) of the particulars of such encroachment, and by whom made, which shall be filed in the office of the town clerk; and the occupant of the land, whether such encroachment shall have been made by him or by any former occupant, shall remove the fence, building or other fixture, causing such encroachment, within thirty days after the filing of such certificate, under forfeiture of fifty cents for each day after the expiration of that time, during which such encroachment shall continue.

SECTION 1335. If the jury find that any such encroachment has been made, the occupant shall pay the costs of such inquiry; and if the same shall not be paid in ten days, the justice shall issue an execution for the collection thereof, directed to any constable of the county, commanding him to levy such costs and his fees thereon, of the goods and chattels of such delinquent, and make return

Costs, by
whom paid
and how col-
lected.

(1) *Form of Certificate of Jury in case of Encroachment.*

COUNTY OF —, } ss.
Town of —, }

The undersigned, disinterested freeholders of said county of —, having been summoned, and assembled on the day of the date hereof, at (*designate place*), in said town, pursuant to a precept issued by —, a justice of the peace of said county, on the application of the supervisors of said town, and having been duly sworn by said justice, as a jury, well and truly to inquire whether any such encroachment on the highway in said town, as described in the order of the said supervisors, dated the — day of —, 18—, a copy whereof is hereto annexed, has been made, and by whom, and having heard the proofs and allegations produced and submitted to us, do hereby certify* that such encroachment has been made by A. B., the present occupant of the land mentioned in said order (or by G. H., the former occupant), and that the particulars thereof are as follows, to wit: that a certain (*board*) fence erected by said A. B. (or G. H.) is within the limits of said highway (*state where, how far within, for what distance, etc.*)

Dated this — day of —, 18—.

(To be signed by all the jury.)

Form of Certificate when No Encroachment is Found.

(*As above to*, continuing*); that no encroachment has been made as described in said order; and we also ascertain and certify the damages which —, the present occupant of the land mentioned in said order, has sustained by these proceedings, at — dollars.

Dated this — day of —, 18—.

(Signatures.)

thereof to such justice, within thirty days from its date, and the justice, constable, jurors and witnesses shall be entitled to the same compensation as for other similar services in proceedings before justices of the peace.

No encroachment found how costs paid.

SECTION 1336. (As amended by ch. 31, L. 1883.)

Appeals, etc.

If the jury find that no encroachment has been made they shall so certify, and shall also ascertain and certify the damages which the occupant shall have sustained by such proceedings; which damages, together with the costs of the proceedings, shall be paid by the supervisors, and shall be a charge in their favor against the town in which they shall have been elected. Either party to such proceeding may appeal to the circuit court of the proper county from the verdict or determination of the jury, and the matters therein shall be tried as an original action brought in said court. Such appeal shall be made in the manner and within the time now fixed by law for making appeals from judgments of justices of the peace.

When fence may be removed.

55 Wis. 527
56 Wis. 580.

SECTION 1337. No person shall be required to remove any fence under the above provisions, except between the first day of November and the first day of April, unless the same shall have been made within three months next before the making of the order for the removal thereof.

Appeal where towns refuse to repair highways, etc.

SECTION 1338. If any town, either by its proper officers, or by a majority vote of its electors, shall refuse to repair any public highway or bridge in such town, any fifteen freeholders therein may appeal from such decision to the county board, by notice (1) in writing, served on the chairman of such town. The county board shall, at any regular meeting of the same, either by a majority of its members or by a committee of not less than three, examine such highway or bridge, and if, after such examination, such board shall determine that such highway or bridge ought to be re-

(1) *Form of Notice on Appeal under Section 1338.*

To ———, chairman of the town board of ——— :

Whereas, the said town of ———, by its proper officers (or, by a majority vote of its electors), has refused to repair the public highway leading from (*describe highway or bridge as the case may be*), in such town: You will take notice that the undersigned freeholders in said town hereby appeal to the county board of supervisors of said county, from such decision, refuse to repair said highway (*or bridge*). }

Dated this ——— day of ———, 18—.

(Signature.)

paired, the chairman of such board shall cause the same to be repaired, and keep an accurate account of the expense thereof; and such expense, when audited and allowed by the county board, shall be charged to such town, and be added by the county clerk to the next county tax apportioned thereto and collected therewith.

Expense to be charged to town.

SECTION 1339. If any damage shall happen to any person, his team, carriage or other property, by reason of the insufficiency or want of repairs of any bridge, sluiceway or road in any town, city or village, the person sustaining such damage shall have a right to sue for and recover the same against any such town, city or village; but if such damage shall happen by reason of the insufficiency or want of repairs of a bridge, sluiceway or road, which any county shall have adopted as a county road, and is by law bound to keep in repair, such county shall be liable therefor, and the claim for damages shall be against the county. If such damage shall happen by reason of the insufficiency or want of repairs of a bridge erected or maintained at the expense of two or more towns, the action shall be brought against all the towns liable for the repairs of the same; and upon recovery of judgment, the damages and costs shall be paid by such towns, in proportion in which they are liable for such repairs; and the court may, in its discretion, direct the judgment to be collected from, or issue execution against each town for its proportion only. No such action shall be maintained against any county, town, city or village, unless within ninety days after the happening of the event causing such damage, notice in writing, signed by the party, his agent, or attorney, shall be given to the county clerk of the county, a supervisor of the town, one of the trustees of the village, or mayor, or city clerk of the city, against which damages are claimed, stating the place where such damage occurred, and describing generally the insufficiency or want of repair which occasioned it, and that satisfaction therefor is claimed of such county, town, city or village (a).

Damages from insufficient highway, how recovered.

3 Pin.	255.
17 Wis.	159.
21 Wis.	485.
22 Wis.	675.
24 Wis.	270, 842.
24 Wis.	549.
25 Wis.	288.
26 Wis.	46, 56.
27 Wis.	191, 256.
28 Wis.	300.
29 Wis.	296.
30 Wis.	250, 335.
30 Wis.	392, 614.
31 Wis.	179.
32 Wis.	200, 605.
33 Wis.	277, 439.
34 Wis.	285, 333.
34 Wis.	357, 425.
34 Wis.	590, 608.
36 Wis.	92, 108.
36 Wis.	145.
36 Wis.	154, 592.
38 Wis.	449, 584.
39 Wis.	674.
40 Wis.	35, 44.
41 Wis.	647.
42 Wis.	643, 696.
48 Wis.	334.
49 Wis.	254.
50 Wis.	298.
51 Wis.	393.
53 Wis.	529.
54 Wis.	528.
56 Wis.	243.
58 Wis.	370.

(a) A town will not be permitted to deny the existence of any highway which it has recognized by expenditure thereon of taxes and labor, and by keeping it open for travel. So held in an action against the town, for dam-

ages sustained by reason of the defective condition of such highway. [*Codner v. The Town of Bradford*, 3 Pin. 259.]

When the usual traveled track has become dangerous, the town should at once repair it, or at least put up and keep up proper guards to protect the public, and notify travelers that the road is unsafe. [*Seward v. The Town of Milford*, 21 Wis. 485.]

If ice or snow is suffered to remain upon a sidewalk in such an uneven and rounded form that a person cannot walk over it, using due care, without danger of falling down, it constitutes a defect, as it seems, for which the city or town will be liable. [*Cook v. The City of Milwaukee*, 34 Wis. 270.]

The mere slipperiness of a sidewalk arising from the ordinary action of the elements, as snow and frost, is not a defect within the sense of the statute for which a town or city is liable. But if the walk is constructed in a faulty and unsafe manner, so as unnecessarily to increase the danger of persons passing over it while it is covered with snow and ice, this would certainly constitute a defect within the meaning of the statute. [*Perkins v. The City of Fond du Lac*, 34 Wis. 435.]

When the highway, having once been put in proper condition, has, without neglect on the part of the town, become suddenly and unexpectedly impassable or unsafe, and the town has had no reasonable time or opportunity to repair the defect or guard travelers against the danger, held, that the liability for resulting injuries does not attach. [*Ward v. The Town of Jefferson*, 34 Wis. 342.]

Objects within the limits of a highway, naturally calculated to frighten horses of ordinary gentleness, may constitute such defect in the way as to render the town liable, even though so far removed from the traveled path as to avoid all danger of collision. [*Foshay v. The Town of Glen Haven*, 35 Wis. 288.]

The absence of any railing or barrier at the side of a bridge forming part of a highway, is a fact from which the jury may find an insufficiency or want of repairs within the meaning of the statute, which would render the town liable in damages for injuries resulting from that cause. [*Hause v. Town of Fulton*, 29 Wis. 296.]

It is not the duty of a town to provide roads which shall be safe for runaway or unmanageable horses, or such as have escaped from the control of their drivers without the fault of the town; and injuries sustained under such circumstances, it appearing that otherwise they might not have been sustained, must be borne by the owners. [*Jackson v. The Town of Bellevue*, 30 Wis. 250.]

It is laid down as a principle, that it is the duty of towns to erect fences and barriers against pits and excavations outside of the limits of the highway, but within the general direction of travel thereon, and so situated as to make travel in the highway unsafe and dangerous, in like manner as railings or barriers are required in the case of a bridge or causeway, etc. [See *Wheeler v. The Town of Westport*, 30 Wis. 392.]

So as to boulders in like situation; the town should remove such, or provide a suitable barrier to prevent the traveler from coming in contact with them. [*Id.* 411.]

But it is not the duty of a town to provide barriers or post notices to prevent travelers from driving off the public highway to places of danger not contiguous to the highway, but distant from it. [*Greene v. The Town of Bridge Creek*, 38 Wis. 449.]

To render the town liable, the object causing the injury need not be within the track of the highway, if so connected with and contiguous to it as to affect the safety and convenience of those using the traveled path. So held, where a person was walking, in the night time, on the grass alongside and close to the wagon track, and came upon a sharp angle of boulders, and stumbling, fell over them and received injury. [*Wheeler v. Town of Westport*, 30 Wis. 407.]

Towns are not required to make highways suitable for travel within their entire space, or to their extreme limits on both sides, but only a part thereof of sufficient width and capacity for the safety and convenience of travel. [*Id.* 410.]

If a traveler, voluntarily and without necessity, or for his own pleasure or convenience, deviates from the traveled track (which is in good condition), and, in so doing, meets with an accident from some cause outside of the traveled track, the town will not be responsible for any damage or injury which he may thus sustain. [*Kelley v. The Town of Fond du Lac*, 31 Wis. 186.]

But if the traveled portion of the highway is obstructed or unsafe, making it necessary for the traveler to turn out on one side or the other of it, and he does so, exercising proper care and prudence, and an accident happens causing damages to him through any defect or obstruction in the part of the highway over which he is so necessarily passing, he will be entitled to recover against the town for injury so received. [*Id.* 187.]

With certain recognized qualifications (see *Ward v. The Town of Jefferson*, 34 Wis. 342, before cited), the duty of a town to keep its highways in proper repair is absolute and unconditional. If it fails so to do, and any of the injuries specified in the statute result, it is liable for such injuries. It cannot throw the responsibility upon its officers, although in certain cases it may have a remedy over against them; neither can it shield itself by the

SECTION 1339a. (Ch. 454, L. 1885.) In any action brought against any county, town, city or village under the provisions of section 1339, of chapter 52, of the revised statutes, the amount recovered by any person for such damage or injury shall in no case exceed the sum of five thousand dollars.

Extent of damages that may be recovered.

SECTION 1340. If any such bridge, sluiceway or road, at time of the occurrence of such damage, shall have been insufficient or out of repair, in consequence of the neglect or default of the overseer of highways of the district in which the same is situated, or in consequence of the neglect or defect or default of any commissioner appointed by the county board, then the town or county against which any judgment shall have been recovered by reason of such defect may recover the amount of such judgment against any such overseer or commissioner.

Overseer or commissioner liable for damages, when.

SECTION 1341. All trees standing or lying on any land over which any highway shall be laid out shall be for the proper use of the owner of such land or person otherwise entitled thereto,

Trees in highways, property of adjacent owner.

56 Wis. 354.

plea that it has no means at command with which to keep its highways in repair. [*Burns Adm'r v. The Town of Elba*, 32 Wis. 605.]

Adoption by a town of a bridge or road already built without its authority as a part of its public highways, by acts clearly indicating such intent, estops the town, and makes it responsible for the safety and sufficiency of the bridge or road. [*Houfe v. The Town of Fulton*, 38 Wis. 608.]

Notice of defect in road to that officer, who is one of a board charged by law with the care and superintendence of highways and bridges in the town is notice to the town; and if thereafter no proper precautions are taken in due time to guard against accidents by reason of such defect, the town is chargeable with negligence. [*Jaquish v. The Town of Ithica*, 38 Wis. 108.]

A town is liable for defects anywhere in the worked and traveled path of a highway, although the same may be made wide enough for three or four teams abreast. [*Mutthews v. The Town of Baraboo*, 39 Wis. 674.]

When a highway becomes dangerous and out of repair, caused by a railroad company constructing its road across the same, it is the duty of the town to see that proper barriers or guards are kept up, to warn travelers of the unsafe condition of such highway. [*Hammond and Wife v. The Town of Mukwa*, 40 Wis. 35.]

See *Kenworthy v. The Town of Ironston*, 41 Wis. 647, as to the liability of a town for an accident caused by running off a dugway or embankment at the margin of the traveled track, unless so guarded as to be reasonably safe and free from danger of driving or slipping off it.

A limestone walk which by use has become so slippery as to be dangerous, and which has been painted so as to increase its slippery condition is defective. [*Morton v. Smith*, 48 Wis., 265.]

For injuries suffered by one on a public street, caused by collision with persons "coasting" on such street, the city is not liable as for insufficiency or want of repair. [*Schultz v. Milwaukee*, 49 Wis. 234.]

A town is relieved from liability for damages caused by defective highways, only when they have been adopted as county highways, under section 1303, R. S., and not in cases where a highway has been merely "laid out" by the county board. [*Stilling v. Town of Thorpe*, 54 Wis., 528.]

A town may by long acquiescence in the use of a side track as a part of the traveled highway become liable to keep the same in repair, although it has provided another sufficient track for public travel. To relieve itself from liability for want of repair of a side track, which is equally accessible, and apparently as much traveled as the prepared track, the town should give some reasonable notice to the public traveling there, that the use of such side track is unauthorized. Such notice may be given by placing obstructions in the side track or by putting up notices, or in any other manner which will sufficiently notify travelers that the town desires them to use the graded track alone. [*Cartright v. Town of Belmont*, 58 Wis. 370.]

except such of them as may be requisite to make or repair the highways or bridges on the same land, or within one mile of the same; but no trees reserved for shade or ornament shall be used for such purpose.

Shade trees in highways.

SECTION 1342. Any person owning or occupying land adjoining any highway may plant or set out trees on each side of said highway, contiguous to his land, which trees shall not be set in the highway more than ten feet from the margin thereof; and if any person shall cut down, injure or destroy any tree that may have been or shall be so planted or set out, or which shall have been left on the side of such highway for shade, he shall be liable to treble damages to the owner or occupant of such adjoining lands.

Damages for cutting down.

Hedges and protection fences on highways.

SECTION 1343. Whenever any owner or occupant of any land bordering upon any highway, excepting a street or alley in a city or village, through which any highway passes, may wish to plant and cultivate any hedge or live fence along the margin of his lands, it shall be lawful for any such person to set or plant any such hedge or live fence precisely on the line of such highway, and also to place on the margin of such highway a protection fence, not to occupy more than six feet of the margin or edge of such highway; and such protection fence, when placed opposite any hedge or live fence actually set or planted, shall be permitted by the overseer of highways and all other persons to remain for the term of seven years; *provided*, that the supervisors may grant permission in writing to the owner of any hedge or live fence, to continue such hedge or protection fence any term of time they may deem necessary.

Public shade trees.

SECTION 1344. Every person along or through whose lands any highway may pass may plant and cultivate on one or both sides thereof, where he shall own land, trees of such varieties as commonly grow at least forty feet in height, set two rods or less apart, in one row, within eight feet of the outer line of the highway, and another similar row upon his land, near the highway; and when such trees shall reach twelve feet in height the overseer of highways shall, if the same be growing thriftily, give such owner, on his request,

a certificate (1) that he accepts such trees as public shade trees. Thereafter such trees shall be public shade trees, and be protected as public property, but the title thereto and to their fruit shall remain in the owner, and such owner, so long as he shall maintain such trees, replacing such as die, shall receive an annual bounty of five cents for each rod of highway, along which such trees are planted, on one side, and ten cents, if on both sides, to be credited upon his highway taxes. For the protection of such trees, while growing, such owner may, by leave of the overseer, enclose the same by a fence.

Bounty there-
for.

SECTION 1345. Every person who shall cut down, break, girdle, bruise or mar the bark, or in any other manner injure any public or private shade tree, growing on the side of or in any highway, or allow any animal under his control to do any injury to any such tree, or hitch any horse or other animal thereto, shall pay five dollars damages for every such act, to be collected by the overseer of highways for the benefit of the highway fund, and such person shall be further liable to the owner of the land in treble damages. Every officer having any charge of a highway, who shall cut down, destroy or damage any such shade tree,

Penalty for
breaking down,
etc., trees on
highways.

(1) *Form of Overseer's Certificate under Section 1344.*

COUNTY OF ———, }
Town of ———. } ss.

I, A. B., overseer of highways for road district No. ———, in the town of ———, in said county, do hereby certify that C. D. has planted and cultivated trees within and upon the (northerly) side of the highway, passing along (or, through) his land in said town; described as follows: (*describe land*), said trees being set ——— rods apart (*two or less*) in one row, within eight feet of the outer line of said highway; and has planted and cultivated upon his own land another similar row of trees, near to and on the same side of said highway.

(*If such be the fact*: and that the said A. B., has planted and cultivated trees within, and upon the (southerly) side of said highway, passing along (or through) his said lands, having set the same ——— rods apart (*continue as above*).

And I further certify that such trees are of such variety as commonly grow at least forty feet in height; and that the same are growing thriftily, and at the date of this certificate, have reached twelve feet in height; and that I accept such trees as public shade trees.

Dated this ——— day of ———, 18—.

Overseer of Highways.

shall forfeit twenty-five dollars, one half to the use of the person prosecuting therefor.

Who may tunnel highways.

SECTION 1346. Any person owning lands lying on both sides of any highway is hereby authorized to construct a tunnel under such highway, also the necessary fences for the passage of stock and other purposes, to and through the same, in such manner as will not interfere with or endanger travel on such highway. All such tunnels shall not be less than twenty-five feet in length, and shall be maintained by the person constructing the same, and the owner of such property shall be liable for all damages which may be occasioned by reason of the failure to keep the same in repair.

Sidewalks may be built, damages for injuring.

56 Wis. 354.

SECTION 1346a Any person residing in any town may build and construct sidewalks along the line of any street or highway, of any suitable material, not exceeding eight feet wide upon premises owned or occupied by him, and keep the same in repair; and any person who shall pile timber, wood, posts or lumber, or lead or drive any team or animal, or place any offal upon, or otherwise obstruct the travel on any sidewalk built as aforesaid or otherwise, or willfully injure the same, shall be liable to a fine of two dollars for every such offense, and shall also be liable to the owner thereof for all damages.

This chapter of general application, except, etc.

SECTION 1347. The provisions of this chapter shall extend to all parts of the state, except where special provisions inconsistent therewith have been or shall be made by law, in relation to particular counties, towns, cities or villages.

PUBLIC WATERING PLACES.

SECTION 1347a. (Ch. 237, Laws 1883, as amended by ch. 21, laws 1885). Any owner or occupant of real estate bordering on a public traveled highway, who shall establish and maintain in the highway, on the real estate so owned or occupied, a convenient, suitable and sufficient supply of good drinking water, in tanks or troughs of such a height that teams attached to vehicles may drink therefrom, for the public use, shall receive from the supervisors of the town a certificate each year, setting forth the fact, which shall

entitle him to a credit of five dollars for that year on his highway tax, for which he is liable by reason of his ownership or occupancy of said real estate; provided, that such watering place shall have been maintained for one year next preceding the time that such highway tax becomes due; and provided further, that such watering places shall not be established within two miles by the line of the highway of another so certified.

2. Any controversy arising under this enactment shall be decided by the supervisors of the town in which such real estate is situated, subject to appeal to the county judge.

OF DRAINS.

(Chapter LIV, R. S. 1878.)

TOWN DRAINS.

Ditches and
drains, how
laid out.

57 Wis. 363.
58 Wis. 466.

SECTION 1359. (As amended by ch. 66, Laws 1885). When any six or more freeholders, residing in any town in this state, in which any marsh, swamp or lands overflowed by water shall be located, shall wish to have a ditch or drain, either open or covered, or constructed of iron, cement, sewer pipe or drain tiles, laid out for the purpose of draining such marsh, swamp or overflowed lands, or for the purpose of strengthening or enlarging any water-course within their town, one or more of whom shall be the owner or owners of a portion of the land through which said ditch is proposed to be laid out, they may make application (1) in writing to the supervisors in the town in which they reside, and in which such lands or water-courses are located for that purpose, which application shall describe the land through which such proposed ditch, drain or enlargement is to

(1) *Form of application to Town Supervisors to Lay Out Drains and Ditches,*

To the Supervisors of the town of, — of — county:

We, the undersigned (*six or more*) freeholders, residing in said town, do hereby make application to you to lay out a ditch (or drain) in said town, for the purpose of *draining a marsh (or swamp, or overflowed land-) therein, which marsh, etc., is described as follows: (*describe same*), (or, *for the purpose of strengthening (or enlarging) a water-course in said town, to wit: (*give name and general description of water-course*); the said ditch (drain or enlargement) to commence at — (*describe point of commencement*), and to run, etc. (*give route or ditch, drain or enlargement as nearly as practicable*), and will pass through the following described lands, to wit: the northeast quarter of the northeast quarter of Sec. 12, etc., of which the undersigned A. B. is the owner; the southeast quarter of the northeast quarter of Sec. 12, etc., of which C. D. is the owner (*and so on*).

Dated at — this — day of —, 18—.

— — —
— — —
— — —

pass, together with the route of the same as nearly as practicable, and the said supervisors shall proceed to lay out and establish such ditch or drain, or to deepen, widen, or in any form enlarge any water-course for the purpose of draining the lands embraced in such application, if in their judgment, such ditch, drain or enlargement is demanded by, or will conduce to the public health or welfare.

SECTION 1360. Whenever any such application is made, the said supervisors shall make out a notice (2) and fix therein a time and place at which they will meet to examine and decide upon the same; such notice shall specify, as near as practicable, the route of the proposed drain, ditch, or enlargement of water-course, and the several tracts of land through which the same will pass; and they shall cause the same to be served upon each of the resident owners of said several tracts of land, personally or by copy left at his usual place of abode, at least five days before the time fixed for such meeting, and copies thereof to be posted up in three public places in the town, at least ten days before such time.

Proceedings on application.

57 Wis. 893.
58 Wis. 466.

SECTION 1361. The supervisors shall meet at the time and place fixed in such notice, and upon

Supervisors to hear and examine.

58 Wis. 466.

(2) *Form of Notice of Meeting of Supervisors to Decide upon Application to Lay Out Ditch, Drain, etc.*

Application having been, on the — day of —, 18—, duly made to the undersigned, supervisors of the town of —, in the county of —, by six freeholders residing in said town, to lay out a ditch (or drain) in said town, for the purpose * of draining a marsh (or swamp, or overflowed land) therein, which marsh, etc., is described as follows: (*describe same*,) (or, * for the purpose of straightening or enlarging a watercourse in said town, to wit: (*give name and general description of water-course*); the said proposed ditch (drain or enlargement) to be open or covered or constructed of iron, cement, sewer pipes or drain tiles, to commence at — (*specify route, as in application*,) and pass through the following described tracts of land, to wit: (*describe the lands*).

Notice is therefore hereby given, that we, the undersigned, supervisors of said town, will meet at — (*designate place particularly*), in said town, on the — day of —, 18—, at — o' clock in the — noon of that day, to examine and decide upon said application.

Dated this — day of —, 18—.

— — —, }
— — —, } *Supervisors.*
— — —, }

being satisfied by affidavit (1) or other proofs, that the notices required in the preceding section have been duly given, shall proceed to examine the location where it is proposed to construct such drain, ditch, or enlargement of water-course, and shall hear any reasons that may be offered for or against the laying out and construction thereof, and shall decide upon the application; but they may, in their discretion, adjourn such meeting from time to time, not exceeding in all twenty days after the day fixed in such notice, giving public notice of each such adjournment, at the time of making the same.

May adjourn.

Supervisors to establish route, make order, cause survey and record same.

ss Wis. 468.

SECTION 1362. Whenever the supervisors shall decide to lay out and establish any ditch, drain or enlargement of a water-course, under the provisions of these statutes, they shall cause an accurate survey thereof to be made; shall establish the route through which such ditch, drain or enlargement of a water-course shall pass, together with the width thereof at the top and bottom, and the depth thereof at different points along the line on which it is to be constructed, and shall incorporate the same in and order (2) to be

(1) *Form of Affidavit of Service and Posting Foregoing Notice.*

STATE OF WISCONSIN, } ss.
County of _____.

_____, being first duly sworn, on his oath says that on the _____ day of _____, 18—, he did personally serve the within (or foregoing, or annexed notice) upon A. B., the resident owner of _____ (describe tract), and C. D., the resident owner of _____ (describe tract, and so on), being lands through which the ditch (drain or enlargement of water-course) mentioned in said notice will pass; that he did, on the same day, serve said notice on E. F., the resident owner of _____ (describe tract), by leaving a copy thereof at his usual place of abode in said town; that he did also, on the same day, post said notice as follows: (state places where posted), the said places being three public places in said town.

Subscribed and sworn to before me, this _____ day of _____, 18—.

_____, Justice of the Peace.

(2) *Form of Order Laying Out Ditch, Drain, etc.*

COUNTY OF _____, } ss.
Town of _____.

Whereas, upon the application of six (or more) freeholders, including one or more of the owners of portions of the lands through which the ditch (drain or enlargement of water-course) hereinafter mentioned will pass, residing in the said

town of ———, for the laying out of a ditch (drain or enlargement of a water-course) therein, for the purpose of draining the following described marsh (or swamp or overflowed land) in said town (*describe same as in application*), which said proposed ditch (drain or enlargement of water-course) is set forth and described in such application, as follows, to wit: (*as in application*).

We, the undersigned supervisors of said town, did, on the ——— day of ———, 18—, make out a notice, and fix therein a time and place at which we would meet to examine and decide upon such application, and did meet on the ——— day of ———, 18—, at ——— o'clock in the ——— noon of said day, at ——— (*here state place of meeting*), it being the time and place fixed by us for said meeting in said notice; and having been first satisfied by affidavit (*or other proofs*) that the notice aforesaid had been duly given five days previous to the time of our said meeting, to all the residents of the lands through which the said ditch (drain or enlargement of water-course) will pass, by serving the same personally upon said owners, or by a copy thereof left at the usual place of abode of each of said owners, and had also been posted up in three public places in said town ten days before the time of our said meeting, in the manner required by law, we did then and there proceed to examine the location where it is proposed to construct such ditch (drain or enlargement of water-course) and did hear any and all reasons that were offered for or against the laying out and construction thereof; and

(*If any adjournment is had, say:*) that said meeting having been adjourned by us for further action in the premises, to the ——— day of ———, 18—, at ——— o'clock in the ——— noon of that day, at ———, (*designate place*), of the time and place of which adjournment public notice was duly given at the time of making the same, the undersigned did again meet at the adjourned time and place aforesaid, and having made further examination in the premises, and having heard any and all further reasons that were offered for or against the laying out and construction of said ditch (drain or enlargement of water-course) did decide upon said application; *and it being our judgment that such ditch (drain or enlargement) is demanded by or will conduce to the public health or welfare, we did decide to lay out and establish the same:

Now, therefore, pursuant to such application, we, the said supervisors, do hereby order that a ditch (*or, drain, or, the said enlargement of said water-course*) shall be laid out and constructed as follows, to wit: (*incorporate survey and accurately describe manner of building ditch, whether open or covered, and whether constructed of iron, cement, sewer pipes, or drain tiles*), the same being an accurate survey thereof, caused by us to be made; that the route of the said ditch (drain or enlargement) be and the same is hereby established as follows: (*give route, describing land*), and that the said ditch (drain, etc.) shall be of a uniform width at the top of ——— feet, and at the bottom of ——— feet, and of a uniform depth of ——— feet (*or shall be at ——— (designate point) of the width at top of ——— feet; at bottom of ——— feet, and of a depth of ——— feet (and so on, stating with great particularity)*).

Given under our hands this ——— day of ———, 18—.

_____,
_____,
_____, } *Supervisors.*

If the determination be against the application, the above form will answer down to *, from which continue as follows:

signed by them, and shall cause such order to be filed and recorded in the office of the town clerk of their town, and shall also file with such order a map or plan of such ditch, drain or enlargement of a water-course, showing the line or route of the same, with the courses and distances and sections of land through which it will pass, together with the sections into which they may have, for the purpose of construction, divided such ditch, drain or water-course, with specifications showing the amount and character of the work required in the construction of each section separately; which map or plan, and order laying out and establishing the said ditch, drain or water-course, shall be filed in the office of the town clerk within twenty days after the time fixed by them for deciding upon the application for laying out and establishing the same. In case said supervisors shall decide against such application, they shall, within twenty days after the day of hearing thereupon, file in the office of the town clerk of their town, the said application and a copy of the notice hereinbefore required, together with the proofs of the service of such notice and the posting thereof, and also their decision in writing. And any freeholder resident of the town feeling himself aggrieved by the determination of the supervisors, either in laying out and establishing any ditch, drain or enlargement of a water-course, or in refusing to lay out and establish the same, may, at any time within fifteen days after the filing of such order or determination, file in the office of the town clerk of the town, a notice (1) of appeal

Appeals how taken, proceedings thereon, costs, how paid, etc.

And did decide against the same, the laying out and construction of said ditch (drain or enlargement), being in our judgment neither demanded by, nor conducive to the public health or welfare.

(1) *Form of Notice of Appeal from Determination of Supervisors as to Laying Out Ditch, etc.*

An application having been duly made on the — day of —, 18—, to the supervisor of the town of —, in the county of —, to lay out in said town a ditch (drain or enlargement of a water-course), as follows, (as in the application), which said proposed ditch, etc., is to pass through the following described lands (as in the application); upon which application such proceedings and decision were by the said supervisors had as are set forth in their order or determination, of which the following is a copy: (*insert copy order or decision*).

Now, I, the undersigned, a freeholder resident of the said

from the decision of the supervisors; which notice shall contain a description of the lands through which the proposed ditch, drain or enlargement of a water-course is to pass, as shown by the application in the case, and also the proceedings and determination or judgment of the supervisors thereon, and whether the appeal is taken for the purpose of reversing entirely the determination of the supervisors in the matter or only to reverse a part thereof, and in the latter case, shall state what part; and also notice that he, or they, will on a certain day and hour of such day to be named in such notice, which day shall not be less than six nor more than ten days after the date of the filing of such notice in the office of the town clerk, apply to a justice of the peace within the county, naming such justice, for the appointment of commissioners to hear and determine such appeal; and on presentation of such notice by the appellant, his, her or their agent or attorney, to the town clerk, he shall immediately file the same with the papers in the case in his office, and shall deliver to the person so presenting such notice of appeal a certified copy of the same; which certified copy shall be served personally on at least one of the supervisors of the town, at least five days before the day named therein for the appointment of commissioners. And upon the presentation by the appellant, his, her or their agent or attorney, of said certified copy of the notice of appeal to the justice of the peace therein named, upon the day and hour set forth in such notice, together with proof of service of such copy on at least one of the town supervisors as herein required, and

Proceedings on
appeal from
decision of
supervisors.

town of ———, feeling myself aggrieved by the said decision, order or determination made by the said supervisors, as aforesaid, do hereby give notice that I appeal therefrom.

This appeal is taken for the purpose of reversing entirely the said determination (or only to reverse a part of said determination, as follows: *(specify the portion appealed from)*).

And I do hereby further give notice, that on the ——— day of ———, 18—, at ——— o'clock in the ——— noon of that day, I will apply to A. B., a justice of the peace of the town of ———, in said county, at his office in said town, for the appointment of commissioners to hear and determine such appeal.

Dated this ——— day of ———, 18—.

— —.

filing with said justice a bond (1) executed by the appellant to the supervisors of the town, with sufficient sureties, to be approved by such justice, conditioned to pay all the costs arising from such appeal, in case the determination or judgment of the supervisors in laying out and establishing, or in refusing to lay out and establish such ditch, drain or enlargement of a water-course (as the case may be), shall not be reversed, the said justice shall thereupon enter the matter in his docket, and shall proceed to make a list of fifteen disinterested freeholders, residents of the county, not of kin to the resident owners of any of the lands embraced in the notice of appeal, or to the appellant, and from said list so made, each party may strike off the names of five persons; and in case no one of the supervisors of the town is present, then the justice shall strike from such list the names for such town; and the justice shall thereupon issue a

(1) *Form of Bond to be Executed on Appeal from Order Laying Out or Refusing to Lay Out Ditch, Drain, etc.*

Know all men by these presents, that we, ———, of the town of ———, in the county of ———, as principal, and ——— and ———, both of said town and county, as sureties, are held and firmly bound unto the supervisors of said town of ——— in the penal sum of ——— dollars, for the payment of which sum well and truly to be made, we do hereby bind ourselves, our and each of our heirs, executors and administrators firmly by these presents.

Sealed with our seals and dated, this ——— day of ———, 18—.

Whereas, the above bounden ———, feeling hims lf aggrieved by the order or decision of the supervisors of said town of ——— laying out and establishing in said town a ditch (drain or enlargement of a water-course) (or refusing to lay out and establish in said town a ditch, etc.), which order or decision was filed in the office of the town clerk of said town on the ——— day of ———, 18—, and has appealed therefrom (or from a part thereof), and has applied for the appointment of commissioners to hear and determine said appeal:

Now the condition of this obligation is such, that if the said ——— shall pay all costs arising from such appeal in case the order, determination or judgment of said supervisors in the laying out and establishing (or in refusing to lay out and establish) such ditch, etc. shall not be reversed, then this obligation to be void; otherwise to be and remain of full force.

Signed, sealed and delivered in presence of:

———,	———, [SEAL]
———,	———, [SEAL]
———,	———, [SEAL]

summons (1), directed to the sheriff or any constable of the county, directing him to summon the five persons whose names were not stricken from such list, to meet at a time and place to be specified in said summons, to serve as commissioners to hear and determine the matter embraced in such appeal. And the sheriff or any constable to whom such summons shall be delivered, shall execute the same by summoning the persons named therein, in the same manner, and with like authority as upon a venire issued in cases pending before justices of the peace, and shall in like manner make return thereof. The persons summoned as commissioners shall meet at the time and place designated in the summons; and the justice issuing the same shall deliver to such commissioners the certified copy of the notice of appeal on file in his office in the case. The commissioners shall be duly sworn to justly and impartially discharge their duties as such commissioners; and shall proceed to view and examine the lands described in the notice of appeal, and the route of the proposed ditch, drain or enlargement of a water-course, and the determination or judgment of the supervisors in laying out and establishing, or in refusing to lay out and establish such ditch, drain or enlargement of a water-course (as the case may be,) and shall hear any reasons which may be offered for and against the determination or judgment of the supervisors

(1) *Form of Summons to be Issued by Justice of Peace.*

COUNTY OF ———, }
Town of ———. } ss.

THE STATE OF WISCONSIN, to the sheriff or any constable of said county:

You are her by commanded to summon (*here name the five persons selected*) to meet on the ——— day of ———, 18—, at ——— o'clock in the ——— noon. at (*designate place*), in the town of ———, to serve as commissioners to hear and determine the matters embraced in the appeal of ——— from an order, determination, decision or judgment of the supervisors of the town of ———, laying out and establishing (*or refusing to lay out and establish*) a ditch (drain or enlargement of water-course) in said town, which order, determination, etc., was filed in the office of the town clerk of said town of ———, on the ——— day of ———, 18—, and forthwith make return of this summons.

Given under my hand this ——— day of ———, 18—.

Justice of the Peace,
Of the town of ———, in the County of ———.

in the matter, and may administer oaths, and examine witnesses upon any point relating to the subject matter submitted to them, and may continue the hearing of the cause from day to day if the circumstances of the case, in their judgment, require such continuance. The decision⁽²⁾ of said commissioners shall be reduced to writing and signed by them, or a majority of them, and shall be by them returned to the justice of the peace issuing the summons in the case, together with the certified copy of the notice of appeal to them delivered as

(2) *Form of Decision of Commissioners on Appeal from Order, etc., Laying Out Ditch, Drain, etc.*

Whereas, ———, of the town of ———, in the county of ———, feeling himself aggrieved by the order, determination, judgment or decision of the supervisors of the town of ———, laying out and establishing (or refusing to lay out and establish) a ditch (drain or enlargement of water-course) in said town, which said proposed ditch (etc.) is described in the copy of notice of appeal hereto attached and made a part hereof, did appeal from said decision, order or determination, and did duly file his notice of appeal in the office of the town clerk of said town of ———, on the ——— day of ———, 18—, and did at the same time file notice that he would apply to A. B., a justice of the peace in said county, on the ——— day of ———, 18—, at ——— o'clock in the ——— noon, at ———, for the appointment of commissioners to hear and determine such appeal, upon which application we, the undersigned, disinterested freeholders, of said county, and not of kin to the said appellant, or to any of the resident owners of the lands embraced in the said notice of appeal, were duly selected to act as such commissioners, and were duly summoned as such commissioners to meet at ———, on the ——— day of ———, 18—; and we having met at ———, on the ——— day of ———, 18—, at ——— o'clock in the ——— noon, it being the time and place specified in said summons for said meeting, and the said justice having delivered to us a certified copy of said notice of appeal, and having been first duly sworn to justify and impartially discharge our duties as such commissioners, we did proceed to view and examine the lands described in the said notice of appeal, and the route of the said proposed ditch (drain or enlargement of a water-course), and did review the said order, determination or judgment of said supervisors, laying out and establishing (or refusing to lay out and establish) the same, and did hear all reasons which were offered for and against the said determination or judgment of the said supervisors in the matter; and having viewed the said lands and the route of said proposed ditch (drain, etc.), and having reviewed said determination or judgment, and heard and considered all reasons and proofs for or against the same, we do hereby decide and determine that the* said determination or judgment (or that the part thereof appealed from) be and the same is hereby in all things affirmed (or reversed).

Given under our hands this ——— day of ———, 18—.

—————, }
 ————, } *Commissioners.*
 ————, }

herein provided, who shall enter the decision in his docket, and file such decision in the office of the town clerk of the town in which the lands described in the notice of appeal shall be located. And if the determination or judgment of the supervisors shall be affirmed by the decision of the commissioners, the party appealing from such determination or judgment shall pay all costs and expenses of the proceedings had in the matter; but if such determination and judgment be reversed, then and in that case, the costs and expenses shall be paid by the town. Each of the commissioners shall be entitled to the sum of one dollar and fifty cents a day for their services; and the justice and constable shall be entitled to such fees as are allowed by law for like services in other cases. When an appeal shall have been made from the determination or judgment of the supervisors refusing to lay out and establish a ditch, drain or enlargement of a water-course, and such determination or judgment shall, upon an appeal, be reversed by the commissioners, the supervisors shall immediately proceed to lay out and establish such ditch, drain, or enlargement of a water-course in accordance with the provisions of this chapter, the same as if they had themselves originally determined to lay out and establish such ditch, drain or enlargement.

SECTION 1363. (As amended by chapter 118, Laws 1881). Whenever the supervisors shall have decided to lay out and construct any such drain, ditch or water-course, they shall divide (1) the same into sections, not less in number

Drains divided
into sections,
how maintain-
ed.

53 Wis. 406.

(1) *Form of Order Dividing Drain, etc., into Sections, etc.*

Whereas, the undersigned, supervisors of the town of ———, in the county of ———, did, on the ——— day of ———, 18—, upon application duly made therefor, decide to lay out and construct in said town a ditch, (drain or enlargement of a water-course), as follows: (*describe as in order*), which proposed ditch, (drain, etc.) is to pass through the tracts of land hereinafter described, the name of the resident owner of each said tract being set opposite to the same, to wit:

N. E. qr. N. E. qr.,	Sec. 12, T. 24, Range 12.....	A. B.
S. E. qr. S. E. qr.,	" " ".....	C. D.
N. E. qr. N. E. qr.,	" " ".....	E. F.

(And so on.)

Now, therefore, it is ordered and determined that the said ditch (drain, etc.) be and the same is hereby divided into sections, as follows: The portion thereof which will pass through

than the number of the several parcels of land which will be directly benefited by the construction thereof; and they shall determine which section shall be maintained and kept in repair by the owner of each such parcel of land so benefited; they shall estimate the cost of constructing each such section separately, and also the dam-

the land of the said A. B., above described, shall be known as section No. 1; that portion thereof which will pass through the land of C. D., above described, shall be known as section No. 2; that portion thereof which will pass through the land of E. F., commencing at (*designate point*) and terminating at (*designate point*), being a distance on the line of said ditch (drain, etc.) of _____ feet, shall be known as section No. 3; the portion thereof through the land of the said E. F., above described, commencing at the point last above mentioned and terminating at (*designate point*), shall be known as section No. 4. (*And so on.*)

And we do further order and determine, that the persons next herein named, being owners of lands directly benefited, in our judgment, by the construction of such ditch (or drain, etc.) shall maintain and keep the same in repair as follows, to wit: That section No. 1 of said ditch (etc.) shall be maintained and kept in repair by the said A. B.; that section No. 2 thereof shall be maintained and kept in repair by the said C. D.; that section No. 3 thereof shall be maintained and kept in repair by the said E. F.; and section No. 4, requiring so deep a cut as to render it in our opinion unjust to impose the duty of keeping the same in repair upon the said E. F., or upon any one person, we do hereby order that said section No. 4 shall be maintained and kept in repair at the expense of G. H., I. K. and J. O., the said persons being the owners of lands so benefited thereby; and we do determine that of the expense of maintaining and keeping said section in repair, the said G. H., being mostly benefited thereby, shall bear one half, and the said I. K. and J. O. shall bear each one quarter thereof.

And we do estimate the cost of the construction of each section of said ditch (drain, etc.), as follows:

Of section No. 1.....	_____	dollars.
No. 2.....	_____	"
No. 3.....	_____	"
No. 4.....	_____	"

And we estimate the damages which will be sustained by the owners of the parcels of land hereinafter described by reason of the opening and construction of said ditch (drain, etc.), as follows:

N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, sec. 12, town 24, range 12, A. B., _____ dollars.

S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, sec. 12, town 24, range 12, C. D., _____ dollars.

(*And so on.*)

Given under our hands at _____, this _____ day of _____, 18—.

_____	} Supervisors of the Town of _____

NOTE.—The agreement as to the amount of damages, and the release of damages, may be in substantially the same form as under sec 1270. The difference will be in recital: This being damages sustained or to be sustained by reason of the "*laying out and construction of a ditch, drain or enlargement of a water-course.*" It is deemed sufficient to refer to the above mentioned forms.

ages which any owner of any parcel of land through which the same has been laid out will sustain by reason of the construction and opening of such drain, ditch or water-course. The cost of such construction, and all the damages occasioned thereby, together with the costs and expenses of surveys, maps, plans and estimates, shall be held to be the total cost of such drain, ditch or water-course. Such damages may be ascertained by agreement between the supervisors and any such owner; and an agreement or release in writing shall then be made with or given by the owner, which shall forever preclude him, and all persons claiming under him, from all further claim for damages. And when not so ascertained and agreed upon, the supervisors shall award (1) to the owner of each parcel of land so damaged, such amount for damages as they shall adjudge to be reasonable and just; which determination and award shall be in writing, and shall be filed in the office of the town clerk, within ten days after filing the order for laying out, and be recorded therein; and such damages, costs and expenses shall be paid on the order of the town board, out of the town treasury, from the money collected as hereinafter provided. Whenever it is necessary for the purpose of draining to make so deep a cut through any land that, in the opinion of the town board it would be unjust to im-

(1) *Form of Award of Damages.*

We, the undersigned, supervisors of the town of —, in the county of —, having by an order duly made, bearing date on the — day of —, 18—, upon due application therefor, laid out and established a ditch (drain or enlargement of water-course) in said town, as follows: (*describe as in order*), and the following named owners of land through which the said ditch (drain, etc.) will pass, not having released all claim to damages to be by them sustained, by reason of the construction of such ditch (etc.), and we not having been able to agree with them as to the amount of such damages, having applied to them for such purpose, and endeavored to make such agreement, do hereby award to such owners as the just and reasonable damages which they will sustain by reason of the construction and opening of such ditch (drain, etc.) as follows:

To A. B., on (*describe land*), we do hereby award the sum of — dollars.

To C. D., on (*describe land*), we do hereby award the sum of — dollars.

Made and signed this — day of —, 18—.

— —, } Supervisors
 — —, } of the town of —.
 — —, }

pose the duty of keeping such cut, or any part of it in repair, on any one of the persons therein interested, the town board may order such cut to be kept in repair, under their direction, at the expense of the persons owning the lands benefited, and may apportion such expense among such owners; and, as often as repairs are made, report the expense to such owners and the sum required to be paid by each, and to the town clerk, who shall insert the same in the next tax roll as a tax on such land; and the same shall be collected as other taxes on real estate are collected. The town board may change the grade, or slope off the banks of any ditch heretofore or hereafter made or laid out by the supervisors of said town; and the same proceedings shall in all things be had in changing or sloping such drain, as in originally laying out such drain. In case the supervisors in laying out a drain or ditch under the provisions of this chapter, or after such drain or ditch having been laid out, upon a subsequent application for a gate or bulkhead, and proceedings had on such application in the same manner as prescribed for laying out a drain, shall deem it for the benefit of the persons interested, that the lands drained or to be drained by such ditch, shall at a certain season of the year be overflowed, they may order a gate or bulkhead to be erected at one or more places in the drain or ditch, designating such places, and that such gate or bulkhead be kept closed during a certain season of each year, designating such season.

Supervisors to apportion and assess cost of construction.

SECTION 1364. The supervisors shall then apportion and assess the total cost of construction upon the several tracts of land in the town, which in their judgment will be directly benefited by the construction and opening of such drain, ditch or water-course, whether such drain, ditch or water-course will pass through the same or not, and upon the several owners thereof, if known, in proportion to the benefits to be respectively derived by such tracts of land thereby; and in case any public highway in the town will be benefited, they shall determine the amount of such benefit which shall be paid by the town, and the remainder of such cost only shall then be apportioned and assessed to the lands benefited. They shall

make and sign a certificate (1) of such assessment, setting forth the total cost of construction, a separate description of each piece or parcel of land in their town which, in their judgment, will be directly benefited, and the amount assessed by them to the same, and shall, within ten days after filing the order laying out such drain, ditch or water-course, cause the same to be filed and recorded in the town clerk's office.

Certificate of assessment to be recorded.

SECTION 1365. (As amended by Ch. 205, Laws 1881; and Ch. 138, Laws 1885). Whenever six or more freeholders residing in each of two adjoining towns, shall wish to have any swamp, marsh or overflowed lands, lying in said adjoining towns, or in either of them, drained by a ditch or drain laid out or constructed partly in each of said towns, or wholly in either, to drain the same, or for such purpose, to straighten or enlarge any water-course lying partly in each of said towns or

Drains, how laid out in two or more towns.

(1) *Form of Certificate of Assessment.*

Whereas, we, the undersigned, supervisors of the town of _____, in the county of _____, did, by an order duly made, bearing date on the _____ day of _____, 18—, lay out and establish a ditch (drain or enlargement of a water-course) in said town, as follows: (*describe as in order*).

Now, we do hereby certify that we have ascertained the total cost of construction of said ditch (drain or enlargement of water-course) to be the sum of _____ dollars (*if such be the fact, that the following public highway in said town (describe same) will be benefited by the construction and opening of said ditch (drain, etc.), and we have determined that for such benefit the said town of _____ shall pay of said cost the sum of _____ dollars*); that we have apportioned the cost of said ditch (drain, etc.) among the owners of the following described tracts of land in said town, each of which tracts will, in our judgment, be directly benefited by the construction and opening of such ditch (drain, etc.), and have assessed upon each said tract, and the owners thereof, the said sum, in proportion to the benefits to be respectively derived by such tracts of land thereby, as follows, to wit: (*here give separate description of each piece or parcel of land in the town which, in the judgment of the supervisors, is directly benefited by the ditch, etc., with name of owner, if known; if not known say "owner unknown," and opposite each piece the amount assessed against it.*)

Given under our hands, at _____, this _____ day of _____, 18—.

_____,
_____,
_____, } *Supervisors of
the town of*
_____.

NOTE — It will be observed that the provisions in regard to the laying out of ditches, etc., are very similar to those in relation to laying out highways. With the forms already given under this chapter, and the forms given for laying out town line roads, it is thought quite unnecessary to make forms under section 1365.

58 Wis. 466.

wholly in either, they may join in making an application, in writing, in duplicate, to the supervisors of both of said towns, in the same manner as provided in section 1359, and such supervisors shall act together and proceed in the same manner in giving notice, deciding upon the application and making the orders, determinations, maps, plans, estimates, awards and assessments, and in all other proceedings as hereinbefore provided for the supervisors of one town; but every notice, order, determination, award and assessment shall have the approval of, and be signed by a majority of the supervisors of each of said towns. All papers and proceedings required to be filed or recorded in the town clerk's office, shall be made in duplicate and one copy thereof filed in the town clerk's office in each town; and all notices required to be posted shall be posted in each town. And the provisions of this section shall be applicable to a town and adjoining city, the same as to two adjoining towns; excepting that the county supervisors of such city shall act as herein provided for town supervisors; and all sections and parts of sections of chapter 54, of the revised statutes of 1878, and any acts amendatory thereof, which refers in any manner to other town officers or their offices, are hereby made applicable to the corresponding city officers or their offices; and all notices required to be posted shall be posted in both town and city.

Appeals allowed for what, and how taken.

58 Wis. 466.

SECTION 1366. If the owner of any land taken as aforesaid shall not be satisfied with the amount awarded to him for damages, or if any owner shall not be satisfied to pay the sum assessed against his land for benefits, he may, at any time within fifteen days after the filing of such award of damages or certificate of assessment for benefits, as the case may be, file with the town clerk a notice of an appeal (1) from the decision of the

(1) *Form of Appeal from Award of Damages and Assessment of Benefits.*

Notice is hereby given that, whereas, the supervisors of the town of — did, by an order duly made on the — day of —, 18—, decide to lay out and establish a ditch (drain or enlargement of water-course) in said town, as follows: (*describe the same generally as set forth in the order*) which said proposed ditch, etc., will pass through the following described lands in said town, to wit: (*describe*), of which I am (or if

supervisors; which notice shall contain a description of his lands, with the amount of damages awarded to such land, or the amount of the benefits assessed upon the same, as the case may be, with notice that he will, on a certain day and place named therein, not less than six nor more than ten days after the date of such filing, apply to a justice of the peace of the county, naming him, for a jury to appraise such damages, or such benefits, as the case may be. Any owner may, by one notice, appeal both from the award of damages and the assessment of benefits; and any number of such owners of land to whom damages were awarded or against whom benefits were assessed, may join in such appeal. On presentation of such notice to the town clerk, by the party interested, or by his agent or attorney, such clerk shall immediately file the same, and deliver a certified copy thereof to the person so presenting it.

SECTION 1367. Upon presentation of such certified copy, at the time and place therein specified, to the justice therein named, such justice shall make a list of eighteen disinterested freeholders

Jury how obtained.

several join in the appeal, say: the N. W. qr. of the N. W. qr. of, etc., of which the undersigned A. B. is the owner; the S.W. qr. of the N. W. qr., of which the said C. D. is the owner; and, whereas, the said supervisors did duly make and sign an award of damages, by which they award-d to me as damages occasioned by the construction and opening of said ditch (or, etc.) through my (or our) said lands, the sum of — dollars (or, the several sums as follows, to wit: —), and did duly make and sign a certificate of assessment in and by which they assessed against my (or our) said lands the sum of — dollars (or, the several sums as follows, to wit: —), as benefits derived by said lands, by reason of the construction and opening of said ditch (or, etc.), which award and certificate of assessment were duly filed in the office of the town clerk of said town on the — day of —, 18—:

Now, therefore, I (or we) not being satisfied with the said amount so awarded to me (or to us severally) as damages as aforesaid, and not being satisfied to pay the sum (or sums) so assessed against my (or our) said lands for benefits, do hereby appeal from the decision of the said supervisors in the premises; and do hereby further give notice that I (or we) will, on the — day of —, 18—, at — o'clock in the — noon, apply to D. E., a justice of the peace in and for said town, at his office therein, for a jury to appraise such damages and benefits.

Dated this — day of —, 18—.

A. B.

NOTE.—The above is drawn from an appeal from both the award of damages and the assessment of benefits. If the appeal is from either only, the other will be omitted.

Precept, how
served, etc.

Proceedings on
return of pre-
cept

58 Wis. 466.

of his county, not of kin to any of the owners or occupants of any of the lands embraced in such notice, and from the list so made, each party may strike off the names of six persons; and if no one of the supervisors or the town clerk is present, then the justice shall strike off from such list the names for such town; and thereupon the justice shall issue a precept (1), directed to the sheriff or any constable of his county, requiring him to summon the six persons whose names were not stricken from such list, to meet at a time and place to be specified in such precept, to serve as jurors to appraise the damages sustained or benefits to be derived, or both, as the case may be, by the person or persons named in said notice, resulting from the laying out and construction of said drain, ditch or water-course. The sheriff or constable to whom such precept shall be delivered shall execute the same by summoning such jurors in the same manner as upon a venire issued in causes pending before justices of the peace, and in like manner make return thereof.

SECTION 1368. The jurors shall meet at the time and place designated in such precept, and the justice shall also be present. The jury shall be sworn, justly and impartially to view, examine and appraise the damages sustained, or to assess the benefits to be derived, or both, as the case may require, to the lands embraced in the notice of appeal. The jury and justice shall then view and examine such lands, and hear any statements and proofs which may be submitted by either party; and the jury may increase or diminish the

(1) *Form of Precept to be Issued by Justice of the Peace.*

COUNTY OF _____, }
Town of _____, } ss.

THE STATE OF WISCONSIN, to the sheriff or any constable of said county:

You are hereby commanded to summon (*here name the six persons selected*) to meet on the _____ day of _____, 18—, at _____ o'clock in the _____ noon, at (*designate place*), in the town of _____, to serve as jurors to appraise the damages sustained and the benefits to be derived by A. B.) and the others, if the appeal is a joint one], resulting from the laying out and construction of a drain (ditch or enlargement of a water-course) through the _____ (*describe the land*), owned by said A. B., in said town, and forthwith make return of this precept.

Given under our hands this _____ day of _____, 18—.

Justice of the peace in the town of, _____ in the county of _____.

amount awarded for damages or assessed for benefits, or both, to or upon the lands of the appellant, or of each appellant separately, if more than one, but on no other lands. A majority of the jury may decide, and when they are equally divided, the justice shall have the casting vote. In making an assessment of benefits, the jury shall proceed on the basis that the total cost of construction as above defined, less the amount fixed to be paid by a town, if any, is to be charged upon the lands described in the certificate of assessment of the supervisors and assess to the appellant his relative share. The jury shall make their award (1) or assessment in writing, which the justice shall forthwith certify to the town clerk, to be recorded by him; and the justice shall also certify to such town clerk a statement of the costs and expenses of such proceedings had before him. Such award or assessment, when made

Majority of jury may decide; basis of decision.

Award to be in writing and effect of.

(1) *Form of Award, etc., of Jury.*

COUNTY OF ———, }
Town of ———. } ss.

Whereas, a precept issued by ———, a justice of the peace of the town of ———, we, the undersigned, being disinterested freeholders of said county and not of kin to A. B. (or to any of the owners or occupants of any of the lands embraced in the notice of appeal) were duly summoned to meet on the ——— day of ———, 18—, at ——— o'clock in the ——— noon, at (*give the place*), to serve as jurors in appraising the damages sustained and the benefits to be derived by said A. B., resulting from the laying out, and construction of a drain (or ditch, etc.) through lands owned by him in said town, described as follows, to wit: ———, pursuant to an order of the supervisors of said town bearing date the ——— day of ———, 18—. And having met at the time and place designated as aforesaid, the said justice also being present thereat, and having been sworn justly and impartially to view, examine and appraise the damages sustained by, and to assess the benefits to be derived by the lands above described, we, the said jury, with the said justice of the peace, did then and there view and examine said lands, and hear all statements and proofs submitted by either party. And being fully advised in the premises, we do hereby appraise the damages sustained by said A. B., at ——— dollars, and assess the benefits to be derived by him at ——— dollars.

Dated this ——— day of ———, 18—.

(*To be signed by all the jurors.*)

I hereby certify that the above is the award of damages and assessment of benefits made by the jury, whose names are thereto subscribed, upon the appeal of A. B. And I do further certify the statement of the costs and expenses of proceedings had before me in the premises as follows: ———.

Dated this ——— day of ———, 18—.

To ———, Town Clerk. ———, Justice of the Peace.

Costs, how
paid.

and recorded, shall, in case of an assessment of benefits, have the effect to amend the certificate of the supervisors as to the particular parcel or parcels of land embraced in such appraisalment. When an appeal from the decision of the supervisors is from an award of damages, if the jury shall not award more than the supervisors, and when the appeal is from an assessment of benefits, if they shall not assess less than the supervisors, the appellant shall pay all costs; otherwise the costs of such proceeding, shall be paid by the town.

Benefits, how
assessed, ap-
portioned and
tax, how col-
lected.

SECTION 1369. The town clerk shall enter upon the next tax roll, in a separate column, the amount assessed for benefits by the supervisors, as shown by their certificate, or as amended by the verdict of a jury, certified to him, if any, opposite the description of each tract or parcel of land so assessed; and if the amount so assessed shall be less than the total cost of construction, as stated in the supervisors' certificate, by reason of any increase of damages awarded or decrease of benefits assessed against any lands therein named, by the finding of a jury, the town clerk shall apportion such deficit upon the whole of the lands therein named, proportionately to the benefits assessed against them by the supervisors or jury, adding such increase to the amount of such assessment. Such taxes shall be collected as other taxes on the roll. If the drain, ditch or water-course is laid out in two towns together, the town clerks of such towns shall meet and together apportion any such deficit caused by the finding of a jury, so that the proper proportionable amount only shall be entered by each on his tax roll.

How done in
two towns.

Drains, how
constructed
and costs, how
paid.

SECTION 1370. Whenever the supervisors shall have laid out any drain, ditch or water-course as before provided, they shall tender to each resident owner of lands, on which an assessment for construction has been made, the work of constructing in accordance with the specifications and within a reasonable time, to be named by said supervisors, such section or sections of such work as may be located on his lands at the price estimated by the supervisors for doing the work so tendered; and if the same shall be accepted, the supervisors shall enter into a written

contract with such owner for the performance of such work, and may require him to give security for the full and faithful performance thereof, if deemed necessary. Any section of work not so disposed of shall be let to the lowest responsible bidder, after posting notices for proposals for at least two weeks, in at least three public places in the town where such work is located; but no such contract shall be awarded for the construction of any section at a price greater than the original estimate of the cost thereof by the supervisors, unless such estimate shall have been increased by them as provided in the next section, or by the increase of damages awarded by a jury on appeal, and then at a price not greater than such increased cost. On completion of the work on any section, according to the specifications, and to the satisfaction of the supervisors, they shall give the contractor an order on the town treasurer for the amount due therefor, which shall be paid only out of moneys collected for that purpose, as herein provided, and shall be receivable in payment of assessments therefor,

SECTION 1371. Whenever it shall be found by actual trial, or by the finding of a jury under the provisions of this chapter, that the amount originally estimated by the supervisors is not sufficient to complete the work required in making or constructing any drain, ditch or water-course laid out by them or their predecessors in office, the said supervisors shall proceed to assess upon the lands directly benefited such additional amount as may be absolutely necessary to complete such work; which assessment shall be made and certificate filed and recorded, and the amount collected, in the same manner and form as is provided in this chapter for the assessment and collection of the original sum.

Cost above
estimate, how
assessed and
collected.

COUNTY DRAINS.

SECTION 1372. The county board of any county may, when, in their opinion, the public health or welfare will be thereby promoted, lay out and construct as hereinafter provided, any drain or ditch, or straighten or enlarge any water-course which shall extend into or through any two or more towns in such county.

County drains,
how made.

Petition to be
filed and pro-
ceedings there-
on.

SECTION 1373. When a petition to the county board, signed by one or more owners of lands adjacent to the proposed line thereof, shall be filed with the county clerk, setting forth the necessity for such drain or ditch, or the straightening or enlarging of such water-course, with a description of its proposed starting point, route and terminus, together with the names of all persons liable to be directly benefited or damaged thereby so far as known to such petitioners, and therewith a bond to the county, with good and sufficient sureties to be approved by the county clerk, conditioned to pay all expenses incurred in case the county board shall refuse to grant the prayer of the petition, the county clerk shall immediately place a correct copy of such petition in the hands of the county surveyor, or some other competent engineer, who shall without delay, taking with him the necessary assistants, proceed to make an accurate survey of the route of the proposed drain, ditch or water-course, and on the completion thereof shall return to the county clerk a plat and profile of the same; with a description of the proposed route, its availability and necessity, and of each separate tract of land through which the drain will pass, how it will be affected thereby, and its situation and level, as compared with adjoining lands, and such other facts as he shall deem material, and such specifications as shall be necessary for the construction of the proposed work; thereupon the county clerk shall cause a notice of the pendency and prayer of said petition, and the time of hearing the same, containing a statement of the starting point and terminus of such drain, ditch or water-course, and a description of the land upon which the same is represented to be located by the plat aforesaid; to be published for at least three successive weeks before said hearing, in some newspaper published in the county, if there be any, and if not in some newspaper having a general circulation therein, to be selected by such clerk.

Proceedings on
hearing.

SECTION 1374. On the day fixed in such notice for the hearing of such petition, or some other day to which such hearing may be adjourned. such county board, after hearing the parties interested in the same who shall appear, shall decide upon such petition; and if they shall decide to

lay out and construct such drain, ditch or water-course, they shall make an order therefor, cause a further survey to be made if necessary, and a map or plan, specifications and estimates, in the same manner as town supervisors are directed in this chapter to do in similar cases, and cause all such orders, plans, specifications and surveys to be filed with the county clerk, who shall keep a full and complete record of all proceedings in each such case.

SECTION 1375. All damages for lands taken for the construction of any such drain, ditch or water-course, may be fixed by agreement in writing, between the owner and the county board, or a committee thereof, and shall be filed with the county clerk, which shall forever preclude such owner and all persons claiming under him from all further claim for damages. The county board or a committee thereof shall make an award in writing, of damages to every owner of land so taken, which shall not have been so agreed upon, and file the same in the office of the county clerk, within ten days after filing the order laying out such drain, ditch or water-course; and unless all such damages shall be agreed upon, further proceedings shall be adjourned to the next session of the county board, or until the determination of all appeals that may be taken from such awards of damages.

Damage, how fixed, etc.

When proceedings to be adjourned.

SECTION 1376. If any person shall not be satisfied with the sum so awarded to him for damages, he may, within twenty days after such award shall have been filed, file with the county clerk a notice of appeal therefrom, which notice shall contain a description of the lands for which damages are claimed, and fix a certain time and place, not less than six nor more than ten days after the date of the filing thereof, at which he will apply to the county judge for a jury to appraise such damages. Any number of persons claiming damages, may join in such appeal. The appellant shall at the same time file with the county clerk, a bond with one or more sureties to be approved by him, and conditioned to pay all costs arising from such appeal; *provided*, such jury shall not award a larger amount of damages than was awarded by the county board.

Owners may appeal, and how.

Appellant to give bond.

SECTION 1377. At the time and place men-

Jury, how
drawn, sum-
moned, sworn,
how to act,
what to do;
costs, how paid.

tioned in such notice, the county judge shall make a list of fifteen disinterested resident freeholders of the county, not of kin to any of the owners or occupants of the said lands described in such notice of appeal. Each party may object to five on such list; and if none of the supervisors be present, the county judge shall strike off five names for the supervisors, and shall thereupon issue a precept to the sheriff, directing him to summon the five persons named in such list not objected to by the parties, to meet at a time and place to be specified in such precept, to appraise the damage sustained by the owner or owners appealing from the assessment of the county board aforesaid, by the location of the said drain, ditch or water-course. At the time and place appointed for the appearance of said jury, they shall be sworn by the county judge, justly and impartially to make such appraisal, and shall proceed to view the premises where said drain, ditch or water-course is proposed to be located, and hear the statements and proofs of parties, if they deem it necessary; and they shall make their return of appraisal to the county judge, which shall be certified by said judge and filed with the county clerk, with the awards of the supervisors aforesaid; and if the amount of the appraisal of such jury shall exceed the amount awarded by the supervisors, the costs and expenses shall be paid by the county; otherwise, by the appellant. All compensation and costs allowed shall be paid from the county treasury, out of the general fund.

Costs of drains,
how determin-
ed, assessed,
collected, etc.

SECTION 1378. At their next session thereafter, the county board shall make an estimate of the expense of constructing such drain, ditch or water-course, and add thereto all compensation and costs allowed for lands taken, and all the costs and expenses of laying out the same, which shall be taken as the total cost of construction; they shall apportion and assess the same upon the lands directly benefited, in the same manner in which town supervisors are directed to make such assessments in this chapter, and file a like certificate thereof in the county clerk's office; and the county clerk shall certify the same, together with a description of each parcel of lands assessed, and the amount so assessed to each, to the proper town clerks, with the next county tax, who shall place

the same on their next tax rolls, to be collected and returned as other county taxes. The county board shall also, at the same time, by resolution, divide such drain, ditch or water-course into sections, and make a separate estimate of the cost of the construction of each, and determine which section shall be maintained and kept in repair by the owner of each such parcel of land so benefited in like manner as provided in section thirteen hundred and sixty-three.

Drains, how divided and maintained.

SECTION 1379. After having divided such drain ditch or water-course into sections, as above provided, the county board shall make an order fixing a time within which the work of construction upon each such section shall be completed, and also a time and place at which such work shall be let to the lowest bidder. The county clerk shall thereupon cause notices to be given of the time and place for receiving proposals for doing such work, specifying the time within which the same must be completed, and that sealed proposals will be received for doing such work, on any one of such sections, or any number of them, or for the entire work; such notice shall be published for four successive weeks in some newspaper published in such county, if there be one, and if not, then in one having a general circulation therein, to be selected by him, and shall let the work in sections to the lowest bidder therefor, respectively; and may require, if he deem it necessary, of any contractor, a bond with sureties to be approved by him, conditioned to faithfully perform the work contracted to be done by him; and the persons contracting to do such work, on the completion thereof to the satisfaction of said county board, shall be paid therefor out of the county treasury, when the same shall have been levied and collected as provided in the next preceding section; and if any person to whom any portion of such work shall be let, shall fail to perform the same, the county clerk may relet such work to the lowest bidder.

Drains, how constructed, when completed, etc.

Contractors to give bonds.

Work, when relet.

MISCELLANEOUS.

SECTION 1380. Any drain, ditch or water-course, laid out and constructed under the provisions of this chapter, may be altered, widened, deepened

Drains may be altered, etc.

or discontinued by the same authority, and upon like application, petition, proceedings, so far as applicable, required to be taken for laying out and constructing the same.

Public lands,
how drained.

SECTION 1381. The county board or town board may locate and construct any drain, ditch or water-course through the lands of other persons for the purpose of draining any of the lands known as swamp and overflowed lands, belonging to their respective counties or towns; the proper board shall cause a survey, plat and profile thereof to be made in the manner hereinbefore provided, and fix by agreement or by an award, the damages for lands taken, to be made and filed in the manner prescribed to them respectively in this chapter. An appeal may be taken from such award of damages, and proceedings had thereon in like manner as is hereinbefore provided, and like proceedings shall be had thereon. The work of constructing such drain or ditch shall be let to the lowest bidder in the manner directed by such county or town board; and when completed, the costs of the same, including all compensation for damages, and all fees and expenses, shall be paid out of the swamp land fund belonging to such county or town, and not otherwise (a).

Damages, how
fixed.

Appeals, how
taken.

Costs, how
paid.

Drains, how
kept in repair.

SECTION 1382. Each person to whom any portion of a drain, ditch or water-course shall have been assigned, in the manner provided in this chapter, to maintain and keep in repair, shall keep and maintain the same in repair, so long as he shall remain the owner of the lands, on account of which the same was so assigned to him and his heirs and assigns thereof forever afterwards.

Penalty for ob-
structing; ob-
structions, how
removed.

SECTION 1383. Whoever shall fill up or place any obstruction in any drain, ditch or water-course laid out and opened under the authority of any county or town board shall, for every such offense, forfeit the sum of ten dollars, and shall also be liable for all damages sustained by any person by reason of such obstruction; and the supervisors of the town where the obstruction is, shall cause the same to be immediately removed.

Repairs and re-
moval of ob-
structions, how
compelled.

SECTION 1384. Whenever any such drain, ditch or water-course has, for any cause, become ob-

(a) The forms already given can be so easily adapted to all proceedings which may be taken under section 1381, that it is unnecessary to prepare separate forms under that section.

structed so that the natural flow of water along the same is prevented, any person feeling himself aggrieved thereby, may make complaint to the supervisors of the town where such obstruction is, who shall view the same, and, on being satisfied that the same is so obstructed, shall make an order (1), under their hands, stating the nature of such obstruction with reasonable certainty, and directing the owner or occupant of the lands, charged with the maintenance and repair thereof, to remove such obstruction within a reasonable time, to be fixed in such order, having reference to the season of the year and the condition of the ground, and shall cause a copy of such order to be served upon such owner or occupant. If such obstruction be not removed by such owner or occupant within the time so fixed, or in case it be denied, then within the time fixed by the certificate of the jury as hereinafter provided, such owner or occupant shall forfeit the sum of fifty cents for every day during which such obstruction shall thereafter continue; and the supervisors may cause the same to be removed and charge the expenses thereof on the lands so charged with the maintenance and repair of such drain, ditch or water-course, and shall order the town clerk to enter the same upon the next tax roll as a tax upon such lands, as provided in section thirteen hundred and sixty-nine; and the money, when collected, shall be paid out, on the order of the supervisors, to defray the expenses of removing such obstruction.

Penalty for non removal.

SECTION 1385. If the owner or occupant upon whom a copy of such order shall be served, shall, If denied, how obstruction determined.

(1) *Form of Order for Removal of Obstruction in Ditch, Drain or Water-course.*

Complaint having been made to us that the ditch (drain or water-course) upon the following described land (*describe same*), owned by A. B., who is charged with the maintenance and repair thereof, has become obstructed so that the natural flow of water along the same is prevented, and we having viewed the same, and being satisfied that the same is so obstructed by (*state with reasonable certainty the nature of the obstruction and the point where the same is*), do hereby order that the said A. B. do remove such obstruction within — days from the service upon him of a copy of this order.

Dated this — day of —, 18—.

_____,
_____,
_____, } *Supervisors.*

within ten days after the service thereof, deny, in writing, such obstruction, and deliver the same to one of the said supervisors, the said supervisors shall proceed to cause a jury to be summoned, and like proceedings shall be had as in case of an encroachment upon a highway, as provided in chapter fifty-two.

Proceedings
when obstruc-
tion is found.

SECTION 1386. If the jury find an obstruction to the natural flow of the water in such drain, ditch or water-course, they shall make a certificate under their hands, describing such obstruction with reasonable certainty, and fix a time within which the same shall be removed, and stating the total cost of such proceeding, which shall be filed in the office of the town clerk, and a copy thereof served upon such owner or occupant, who shall remove such obstruction and pay such costs within the time fixed in such certificate; and in case he shall fail so to do, the supervisors may cause such obstruction to be removed, and the expenses of such removal, and the unpaid costs of such proceedings, shall be collected as a tax, as provided in section thirteen hundred and eighty-four.

Proceedings
where no ob-
struction is
found.

SECTION 1387. If the jury find that there is no obstruction, they shall certify the same and shall ascertain what damages the owner or occupant has sustained by reason of such proceeding; also all the costs and expenses of such proceeding, and shall state the same, and in such case the said damages, fees and expenses of such proceeding shall be paid by the town, and charged to and collected by the town from the parties complaining of such obstruction.

Effect of or-
ders of town
and county
boards as evi-
dence.

SECTION 1388. Every order of the supervisors of any town or towns, or of the county board of any county, laying out, altering, straightening or discontinuing any drain, ditch, or water-course, under the provisions of this chapter, the record thereof, or a certified copy of such record shall be presumptive evidence of the facts therein stated, and of the regularity of all the proceedings, prior to the making of such order.

NOTE.—For procedure on denial of obstruction, see forms given under Sec. 1382, etc., Chap. 52.

**RE-ASSESSMENT OF BENEFITS IN THE CONSTRUCTION
OF DRAINS WHERE ORIGINAL ASSESSMENT IS DE-
CLARED VOID.**

(Chapter 187, Laws of 1879.)

SECTION 1. Whenever any drain, ditch or water-course shall have been constructed, or enlarged by the officers of the town, for the purpose of draining any marsh, swamp or overflowed lands, and such town shall have paid or incurred the costs and expenses of constructing or enlarging the drain, ditch or water-course, or some part thereof, and whenever the benefits heretofore or hereafter apportioned and assessed upon any land by the supervisors of the town for the construction or enlargement of such drain, ditch or water-course, shall be set aside or determined to be illegal or void, or the collection thereof prevented by the judgment of a court or the action of the county board, or whenever any town treasurer shall have been prevented by injunction from collecting or returning as delinquent any such tax or assessment for benefits in consequence of any error, omission, irregularity or illegality, in any of the proceedings in laying out, constructing or enlarging such drain, ditch or water-course, or in the apportionment or assessment of such benefits, or any erroneous or imperfect description of such lands, or of any omission to comply with the forms and steps required by law, then if the lands were properly chargeable, taxable or assessable for such benefits, such tax or assessment for benefits, or so much thereof as shall not have been collected, with ten per cent. interest from the time of the original assessment for benefits, may be re-apportioned and re-assessed upon such lands by the supervisors of the town at any time within ten years after such judgment or such action of the county board, or the dissolution of such injunction, and the supervisors of the proper town shall make an order directing the same to be re-assessed upon such lands, and file the same in the town clerk's office.

When costs and benefits, duly assessed and apportioned, are from any cause uncollected or found uncollectible, they may be re-apportioned, and re-assessed.

SECTION 2. The supervisors of the town shall, within ten days after filing the order for re-assessment, re-assess such benefits or so much thereof as have not been collected, with ten per cent. in-

Duty of supervisors.

terest, as provided in the preceding section, upon such lands and upon the owner thereof, and shall make a certificate of such re-assessment setting forth a description of the piece or parcel of land so re-assessed and the amount re-assessed by them to the same, and shall within ten days after such re-assessment cause the same to be filed and recorded in the town clerk's office.

Appeal may be taken.

SECTION 3. If any person shall not be satisfied to pay the amount re-assessed against his lands for benefits, he may at any time within fifteen days after the filing of such certificate of re-assessment, appeal therefrom, as provided in section one thousand three hundred and sixty-six of the revised statutes of 1878, and such appeal shall be tried, and the same proceedings had thereon, as provided in sections one thousand three hundred and sixty-seven and one thousand three hundred and sixty-eight of the revised statutes of 1878.

Duty of town clerk.

SECTION 4. The town clerk shall enter upon the next tax roll in a separate column, the amount re-assessed by the supervisors as shown by their certificate or as amended by the verdict of the jury, certified to him, if any, opposite the description of each tract or parcel of land so re-assessed, and such tax shall be collected as other taxes on the roll.

SECTION 5. This act shall take effect and be in force from and after its passage and publication.

Approved March 4, 1879.

NOTE.—For law relating to drainage of mines see chapter 268, Laws 1880.

OF FENCES.

(Chap. LV, R. S. 1878.)

SECTION 1389. The overseers of highways in their respective towns, the aldermen of cities in their respective wards, and the trustees of villages in their respective villages, shall be fence viewers, and in towns having less than three road districts, the supervisors shall also be fence viewers.

**Who to be
fence viewers.**

1 Wis. 227.
2 Wis. 10.
3 Wis. 27.

SECTION 1390. (As amended by Ch. 158, L. 1880, and Ch. 119, L. 1881, and Ch. 201, L. 1882.) All fences not less than fifty-four inches high, consisting of boards firmly fastened to posts well set, not more than nine feet apart the space between the ground and bottom board and each space between the boards not more than eight inches; and all fences consisting of five barbed wires with at least thirty-six barbs each to the rod, firmly fastened to posts well set, not more than sixteen feet apart, with one good stay between, the top wire not less than forty-eight inches high at the place of attachment, and the bottom wire not more than seven inches from the ground, and the space between the bottom and second wire not more than seven inches, and the space between the second and third wires not more than eight inches, and the space between the third and fourth wires not more than twelve inches, and the space between the fourth and top wires not more than sixteen inches; the above mentioned spaces to be measured at the place of attachment; and all fences consisting of rails, timbers, wires, boards or stone walls, or any combination thereof, and all brooks, rivers, ponds, creeks, ditches or hedges, or other things which shall be considered equivalent to the board or barbed wire fence herein provided for, in the judgment of the fence viewers within whose jurisdiction the same may be, shall

Legal fences.

61 Wis. 318.

Wire fences.

Fences on
marsh lands.

be deemed legal and sufficient fences (a). Fences on marsh lands may be made by a ditch or by a fence combined with ditch or ditches, not exceeding twelve feet in width, equal amounts of material being taken from, or equal space occupied on each side of the division line.

Description of
legal fence.

SECTION 1390a. (Ch. 107, L. 1880.) Any fence consisting of a combination of wire and pickets, constructed of posts securely set in the ground, not more than fifteen feet apart, connected by three or more wires not less in size than number nine wire, with pickets not less than four feet long, nor more than six inches apart, the pickets securely fastened to the wire, shall be deemed a legal fence within the meaning of sections one thousand three hundred and ninety and one thousand eight hundred and ten of the revised statutes, and all other laws pertaining to fences.

Division fences.

19 Wis. 49.
31 Wis. 194.
41 Wis. 676.
56 Wis. 479.
57 Wis. 330.
61 Wis. 318.

SECTION 1391. (As amended by sec. 1, ch. 138 and ch. 307, L. 1880.) The respective occupants of adjoining lands, used and occupied for farming purposes, shall keep and maintain partition fences between their own and next adjoining premises in equal shares, so long as both parties continue to so occupy the same and such fences shall be kept in good repair throughout the year, unless the occupants of the lands on both sides otherwise mutually agree. And owners of lands who do not maintain and keep in repair lawful partition fences, shall not be entitled to recover any damages whatever for trespasses by the animals or owners of any adjoining lands with whom partition fences might have been maintained if such lands had been inclosed (b).

(a) Penalty for malicious injury to fences, gates, bars, etc. [Section 441, R. S.]

Every railroad corporation required to erect and maintain on both sides of its road, good and sufficient fences. [Section 1810, R. S.]

The fences contemplated by the statute are the ordinary fences of the country, built upon agricultural lands; not those whose character and fashion are suggested by the owners of town, village or city lots. [Brooks v. Allen, 1 Wis. 127.]

Dispute about title of division fence between adjoining owners, raises a question of title to real estate. A fence is a part of the realty. [Murray v. Van Dertyn 21 Wis. 67. Kimball v. Adams, 52 Wis. 554.]

Rails placed along line of an intended fence, but not laid up into fence, pass by deed of land. [Conklin v. Parsons, 2 Wis. 264.]

The owner of cattle is liable, if being in the road for any other purpose than passage merely, they escape into an adjoining inclosure through defective fences. [Harrison v. Brown, 5 Wis. 27.]

The jurisdiction of fence viewers is special and statutory, and unless the facts exist upon which they are authorized to act, the proceedings are void. So held where they required the owner of uninclosed land to erect and maintain part of a division fence. [Bechtel v. Nelson et al. 19 Wis. 50.]

(b) Under chapters 138 and 307, Laws 1880, the owner of lands who does not maintain and keep in repair a lawful partition fence, cannot recover

SECTION 1392. (As amended by sec. 2, ch. 138, L. 1880). Every partition of the fence or of the line upon which partition fences are to be built between adjoining owners, made by the owners thereof in writing (1), signed, sealed and witnessed

Partition of fences, how made.

damages for a trespass by the animal of an adjoining land owner. [*Roach v. Laurence*, 56 Wis. 478].

It is immaterial whether or not the fences have been divided under sections 1392 and 1393 R. S. [*Taylor v. Young*, 61st Wis. 314].

(1) *Form of Partition of Line by Owners.*

This agreement made this — day of —, 18—, between A. B., of the town of —, in the county of —, of the first part, and C. D., of — of the second part, *witnesseth*: that whereas the said parties hereto are owners of adjoining lands, the dividing line between which is described as follows, to wit: Commencing at a point, etc. (*describe the line*), and desire to make partition of said line, so as to ascertain and assign to each said owner his portion of the partition fence to be built or maintained thereon:

Now, therefore, in consideration of the premises, it is mutually agreed by and between the parties hereto, that the said line be and the same is hereby partitioned and assigned as follows, to wit: The easterly one half thereof, being — rods in length, shall belong and is hereby assigned to the said A. B., and the westerly one half thereof shall belong and is hereby assigned to the said C. D.

In witness whereof, the said parties have hereunto set their hands and seals, the day and year first above written.

In presence of:

A. B. [SEAL.]
C. D. [SEAL.]

STATE OF WISCONSIN, }
County of —, } ss.

On the — day of —, A. D. 18—, personally came before me the above named A. B. and C. D., to me known to be the persons who executed the above instrument, and severally acknowledge the same to be their free act and deed.

I. P., *Justice of the Peace.*
(or the authorized officer.)

Form of Partition of Fence by Owners.

This agreement made this — day of —, 18—, between A. B., of the town of —, county of —, of the first part, and C. D., of —, of the second part, *witnesseth*: that whereas the said A. B. has heretofore erected a fence on the dividing line between his lands and the lands of C. D., which said fence commences at — (*describe fence*); and whereas, after the erection of said fence the said C. D., inclosed a field on the (*north*) side of said division line, so that (*eighty*) rods of said fence, commencing (*describe the portion of fence*), has become and now is a partition fence between the respective fields of the said A. B. and C. D.; and whereas, the said C. D. has paid to the said A. B. — dollars, being in full for one half the value of said (*eighty*) rods of fence, it is therefore agreed, in consideration of the premises, between the said parties, that the (*forty*) rods of fence on the (*east*) part of said eighty rods,

41 Wis. 676.
61 Wis. 318.

Effect of.

Relating to
fences.

by two witnesses, or by the fence viewers, in writing under their hands, in the cases and in the manner hereinafter provided, after being recorded in the town clerk's office, shall oblige such owners, their heirs and assigns, so long as such adjoining land on each side respectively, shall remain in the same ownership, and after a severance of ownership, until a new partition of such fence shall be made, to build and maintain such fence agreeably to said partition. But neither such owner, nor his heirs or assigns, shall be bound to build or maintain any part of such partition fence during any time when he shall not so occupy his lands so adjoining.

SECTION 1392a. (Ch. 202, L 1883.) 1. When any owner or occupant of land shall have built a fence before a boundary line shall have been established between him and any adjoining land by the county surveyor, and if it shall prove after the boundary line is so surveyed that the said fence shall be on the adjoining land, the party who has built the same, or if the land is sold, the party who built the same or the purchaser of the land, shall be the owner of the fence; provided, that the owner of the fence removes the same on the boundary line so established, upon a notice served upon him by the adjoining owner of land. Said notice shall be in writing, and served personally on the party who shall remove the said fence, or to leave a copy of said notice at the usual place of abode of such party with some member of his family of suitable age and discretion, who shall be informed of the contents thereof, at least thirty days before the said fence shall be removed, but no fence on a boundary line shall be removed between the first day of April and the first day of November, except the owners of such adjoining lands mutually agree thereto, that the fence may be removed.

Removal of.

2. If the said fence is not removed within thirty days after the notice shall have been served on the party owning the same, the other party

shall be well and sufficiently maintained and kept in repair by the said C. D., and the remainder of said eighty rods shall be kept in like repair by the said A. B.

In witness whereof, etc. (to be executed, witnessed and acknowledged as in preceding form).

may remove said fence on the boundary line, and recover the amount of expenses therefor.

3. All acts or parts of acts conflicting with the provisions of this act are hereby repealed, and this act shall be in force and effect from and after its passage and publication.

SECTION 1393. A division of a partition fence, or the line upon which a partition fence between adjoining lands shall be built, may be made by fence viewers in the following cases:

Division of
partition
fences, how
made.

2 Wis. 10.
19 Wis. 49.
41 Wis. 573.
61 Wis. 318.

1. When any owner of uninclosed lands shall desire to inclose the same, he may have the line between his land and the adjoining land of any other person divided, and the portion upon which the respective owners shall erect their share of the partition fence assigned, whether such adjoining land be inclosed or not.

2. When any lands belonging to different persons in severalty shall have been occupied in common, or without a partition fence between them, and one of the occupants shall be desirous to occupy his place in severalty, and the other shall refuse or neglect, on demand, to divide with him the line where the fence ought to be built, or to build a sufficient fence on his part of the line, when divided, the occupant desiring it may have the same divided, and the share of each assigned.

3. When any controversy shall arise about the right of the respective occupants in partition fences, or their obligation to maintain the same, either party may have the line divided, and the share of each assigned.

In either such case application may be made to two or more fence viewers of the town where the lands lie, who, after reasonable notice (1) in writ-

When and by
whom built.

1) *Form of Notice of Fence Viewers to Divide Partition Fence or Line, and to Assign Shares Thereof.*

To M. N. and O. P.:

It appearing to us, the undersigned, fence viewers of the town of —, in — county, that M. N. is the owner of certain uninclosed land in the said town, which he desires to inclose, and that the same adjoin lands therein owned by O. P. (and inclosed, if such be the fact). And application having been duly made to us by said M. N., to divide the partition fence (or the line upon which a partition fence shall be built) between said adjoining lands, said fence (or said line) being described as follows, to wit: Commencing at (state location with reasonable certainty), and to assign to said M. N. and O. P. each his portion of said fence (or line), you are hereby no-

ing to each party, to be served as a summons is in a civil action before a justice of the peace, shall, in writing, under their hands, divide the partition (1) fence or line, and assign to each owner or occupant his share thereof; and in the second and third cases, they shall also therein direct the time within which each party shall build, or repair, as may be proper, his share of the fence,

tified that we will, on the — day of —, 18—, at the hour of — o'clock in the — noon, meet and view said fence (or the said partition line), and then and there divide the same and assign to each said party his share thereof, when and where you may be heard, if you desire.

Dated this — day of —, 18—.

— —, } *Fence Viewers of*
— —, } *the Town of*
— —, } —.

NOTE.—“A summons in a civil action before a justice of the peace is served by reading the same to the defendant, and delivering a copy thereof to him, when demanded, if the defendant be found; and if not found, by leaving a copy thereof at his usual place of abode, in the presence of some one of the family, of suitable age and discretion, who shall be informed of its contents.” [Section 3800, R. S.]

(1) *Form of Division and Assignment of Share of Partition Fence or Line.*

COUNTY OF —, } ss.
Town of —, }

Due application having been made to us, the undersigned, fence viewers of the town of —, by M. N., for a division of the partition fence (or of the line upon which a partition fence shall be built) between uninclosed lands in said town owned by said M. N., which he desires to inclose, and adjoining (if inclosed, so state) lands therein owned by O. P., the said fence (or line) being described as follows: (*as in notice*), and for an assignment to each of said owners of his share of said fence (or line), and having, after reasonable notice in writing duly served upon each party, met pursuant to said notice, on the — day of —, 18—, and viewed the said fence (or the said partition line), we, the said fence viewers, do hereby divide the said fence (or line) and assign to each said party his share thereof, as follows: (*describe particularly the share of fence or line assigned to each party.*)

Given under our hands, this — day of —, 18—.

— —, } *Fence Viewers of*
— —, } *the Town of*
— —, } —.

Form of Notice of Meeting of Fence Viewers to Divide Partition Line under Subdivisions 2 and 3, of Section 1393.

To E. F., G. H. and L. M.:

It appearing that certain lands in the town of —, belonging to E. F., G. H. and L. M. in severalty, have been occupied in common (or without a partition fence between them), and that the said E. F. is desirous to occupy his land in severalty, and it appearing also that the said G. H. and L. M., whose lands adjoin those of the said E. F., on demand thereof, refuse (*or neglect*) to divide with the said E. F. the line where

the partition fence ought to be built (or refuse or neglect to build a sufficient fence on their respective parts of said line, the same having been duly divided), which said partition line is described as follows: (*describe line*), (or a controversy having arisen about the rights of J. P. and R. S., occupants of adjoining lands in the town of —, in or having arisen about the obligation of J. P. and R. S., occupants of adjoining lands in —, to maintain) a certain partition fence between their said lands; the said fence being described as follows: (*give location of fence*).

You are hereby notified that we (the undersigned fence viewers of the town of —), application having been duly made to us therefor, will, on the — day of —, 18—, at the hour of — o'clock in the — noon, meet and view the said line (or the line of said fence) above described, and will then and there proceed to divide the said partition line (or the said partition fence), and assign to each party his share of the same, and direct the time within which each shall build (or repair) his share of such partition fence, at which time and place you may be heard, if you desire.

Dated this — day of —, 18—.

— — —, }
— — —, } *Fence Viewers.*
— — —, }

Form of Fence Viewers' Determination under Subdivision 2, Section 1393.

COUNTY OF —, } ss.
Town of —, }

Whereas, E. F., G. H., and L. M., are owners in severalty of certain lands in said town of —, and have occupied the same in common (or without a partition fence between them), and E. F. is desirous to occupy his land in severalty; and whereas, the said G. H. and L. M., whose lands adjoin those of the said E. F., after demand therefor duly made upon them, refuse (or neglect) to divide with the said E. F. the line where the partition fence ought to be built (or refuse, or neglect, to build a sufficient fence on their respective parts of said line, the same having been duly divided), which said partition line is described as follows: (*describe as in notice*); and whereas, upon due application made to us, we, the undersigned, fence viewers of said town, proceeded, after having given reasonable notice in writing, duly served upon each party, to view the said partition line pursuant to said notice, on the — day of —, 18—:

Now, therefore, upon said view, and (if it be the fact) having heard the allegations and statements of the said parties, we hereby divide the said line, and assign to each owner aforementioned his share thereof, as follows: To the said E. F. (one-third) part of the same, to wit: (*give location and length*); to said G. H. (one-third) part to wit: — (and so on). And we direct the said parties to build their shares of said fence, as hereby assigned, within — days from the date hereof.

Given under our hands this — day of —, 18—.

— — —, }
— — —, } *Fence Viewers.*
— — —, }

Form of Determination under Subdivision 3, Section 1393.

COUNTY OF —, } ss.
Town of —, }

A controversy having arisen about the rights of J. P. and R. S., occupants of adjoining lands in the town of —, in (or,

having regard to the season of the year, and shall file such decision in the town clerk's office, who shall record the same. If either party shall refuse or neglect to build or repair, within the time so assigned, his part of the fence, the other may, after having completed his own part, build or repair such part and recover double the expense thereof as hereinafter provided.

How partition
fences running
into water,
made.

SECTION 1394. Where a partition fence running into the water is necessary to be made, the same shall be done in equal shares, unless otherwise agreed by the parties; and in case either party shall refuse or neglect to make or maintain the share belonging to him, similar proceedings shall be had as in case of other fences, and with the like effect.

How made
when bound-
ary is a river,
etc.

SECTION 1395. When the boundary line between inclosed lands of different persons is a river, brook, pond or creek, which of itself is not a sufficient fence, and it is impracticable, without unreasonable expense, for a partition fence to be built on the true boundary line, and either owner or occupant shall refuse to join in making a partition fence on either side thereof; or, if they shall disagree respecting the same, either party may apply to two or more fence viewers of the town, who, after giving notice (1) as provided in section

having arisen about the obligation of J. P. and R. S., occupants of adjoining lands in ———, to maintain a certain partition fence between their said lands, the said fence being described as follows, to wit: Commencing at, etc., ———. And upon application duly made to us, we, the undersigned fence viewers of said town of ———, having upon reasonable notice in writing duly given to each party, viewed the said partition fence on the ——— day of ———, 18—, pursuant to such notice:

Now, therefore, upon said view, we hereby divide the said partition fence, and assign to the said J. P. as his share thereof, to be repaired and maintained by him, the following, to wit: *(give location and length of fence)*; and to said R. S., as his share of said fence, to be repaired and maintained by him, the following, to wit: ———. And we do hereby direct that each of said parties repair his said share of such partition fence within ——— days from the date hereof.

Given under our hands this — day of —, 18—.

— — —, }
— — —, } *Fence Viewers.*
— — —, }

(1) *Form of Notice of Meeting of Fence Viewers under Section 1395.*

To M. N. and O. P.:

It appearing from the application of M. N., that the *(naming it)* river *(brook, pond or creek)* is the boundary line be-

thirteen hundred and ninety-three, shall proceed to view such river, brook, pond or creek; and, if they shall determine that the same is not a sufficient fence, and that is impracticable, without unreasonable expense to build a fence on the true boundary line, they shall, in writing (1), under

tween the following inclosed lands in the town of —, to wit: land described as (*describe*) owned (*or occupied*) by said M. N., and land described as —, owned (*or occupied*) by O. P., and that said river (*etc.*) of itself is not a sufficient fence between said lands, and that it is impracticable, without unreasonable expense, for a partition fence to be built on the true boundary line between the same, and that the said O. P. refuses to join in making a partition fence on either side of said river (*or*, that the said M. N. and O. P. disagree respecting the making of a partition fence on either side of said river); and the said M. N. having applied to us, the undersigned, fence viewers of said town, for our action in the premises: You are hereby notified that we will, on the — day of —, 18—, at — o'clock in the — noon, proceed to view that part of said river forming the aforesaid boundary line, and if we shall determine that the same is not a sufficient fence, and that it is impracticable, without unreasonable expense, to build a fence on the true boundary line between said inclosure, we will then and there proceed to determine how, or on which side of said river the fence shall be built, or whether partly on one side and partly on the other, and assign to each owner (*or occupant*) before named his share thereof, and direct the time within which each shall build the same, when and where you may be heard upon the subject, if you desire.

Dated this — day of —, 18—.

— —, }
— —, } *Fence Viewers.*
— —, }

(1) *Form of Fence Viewers' Determination under Section 1395.*

COUNTY OF —, }
Town of —, } ss.

Whereas the — river (*brook, pond or creek*) is the boundary line between the following inclosed lands, in the town of —, to wit: land described as (*proceed as in notice*); and, whereas, upon application duly made to us, the undersigned, fence viewers of said town of —, we, having given reasonable notice in writing, duly served upon each said party, proceeded pursuant to such notice, on the — day of —, 18—, to view that part of said river which constitutes the aforesaid boundary line; and having thereupon determined that such river is not a sufficient fence between said lands, and that it is impracticable, without unreasonable expense, to build a fence on the true boundary line between the same: Now, therefore, upon such view and determination, we do hereby further determine that such fence shall be built upon the north, or other side of said river, one half by the said M. N. and one half by the said O. P. (*or that — rods of said fence shall be built on the (north) side of said river by said M. N., and — rods of said fence shall be built on the (south) side of said river by said O. P.*); and we further deter-

their hands, determine how or on which side thereof the fence shall be built, or whether partly on one side and partly on the other, and assign to each owner or occupant his share thereof, and the time within which the respective parties shall build the same, and file such determination in the office of the town clerk, who shall record the same. If either party shall refuse or neglect to build within the time so assigned, his part of the fence, the other may, after having completed his own part build such part, and recover double the expense thereof, as hereinafter provided. If said fence viewers shall determine that it is impracticable, either from the formation of the banks of such river, brook, pond or creek, or from any other cause, to maintain any fence along or near said boundary line, they shall give written notice (1) to the parties of such determination.

Repairs of fences, how compelled.

57 Wis. 330.

SECTION 1396. In case any person shall neglect to repair or rebuild any partition fence, which by law he ought to maintain, the aggrieved party may complain to two or more fence viewers of

mine and direct, that the said parties shall each build the portion of said fence by him by this order assigned, within _____ days from the service upon him of a copy thereof.

Given under our hands at _____, this _____ day of _____, 18—.

_____,
_____,
_____. } *Fence Viewers.*

1) *Form of Notice by Fence Viewers that Fence is Impracticable.*

COUNTY OF _____, } ss.
Town of _____.

To M. N. and O. P.:

We, the undersigned, fence viewers of said town of _____, upon due application to us for that purpose, having on the _____ day of _____, 18—, viewed that part of the _____ river (brook, pond or creek) forming the boundary line between inclosed lands severally owned (or occupied) by you in the town of _____, viz: (describe the land of each): You are hereby notified that we have determined upon such view, that it is impracticable, from the formation of said river (or if other cause, state), to maintain any fence along or near said boundary line.

Dated this _____ day of _____, 18—.

_____,
_____,
_____. } *Fence Viewers.*

the town, who, after giving notice (2) as provided in section thirteen hundred and ninety-three, shall examine the same, and if they shall determine such fence is insufficient, they shall signify the same to the delinquent party, and direct (3) him to repair or rebuild the same within such time as they shall deem reasonable. If such fence shall not be repaired or rebuilt within the time so fixed, the complainant may repair or rebuild the same, and recover double the expense thereof, as hereinafter provided.

SECTION 1397. Whenever any owner or occupant shall have built, repaired or rebuilt any fence, in pursuance of the preceding sections, which the adjoining owner or occupant shall have been lawfully directed by fence viewers to build, repair

Cost of such repairs, etc., how fixed.

(2) *Form of Notice to Occupants on Complaint under Section 1396.*

To G. H.:

Complaint having been made by E. F. to us, the undersigned fence viewers of the town of —, that the portion of partition fence between lands occupied by him and yourself in said town, which you by law ought to maintain, is out of repair, and that you neglect (or refuse to repair or to rebuild) the same, the line of said fence being as follows, to wit: (state location): You are hereby notified that we will, on the — day of —, 18—, at the hour of — o'clock in the — noon, proceed to examine the fence, of which complaint is made, and determine as to its sufficiency, and the time within which the same shall be repaired (or rebuilt)

Dated this — day of —, 18—.

—, }
—, } Fence Viewers.
—, }

(3) *Form of Determination of Fence Viewers Directing Delinquent Occupant to Repair Partition Fence.*

COUNTY OF —, } ss.
Town of —, }

To G. H.:

We, the undersigned fence viewers of said town of —, upon complaint made to us by E. F., and after reasonable notice to you, did, on the — day of —, 18—, examine the partition fence between lands occupied by you and the said E. F., severally, in said town, being on the line, etc. (as in notice), and have determined that the portion thereof which by law you ought to maintain, being the (south half) of the same, is insufficient:

You are therefore directed to repair (or rebuild) your said portion of such fence within — days from this date.

Given under our hands this — day of —, 18—.

—, }
—, } Fence Viewers.
—, }

or rebuild, and have failed to do within the time prescribed, he may call upon any two or more fence viewers of the town, who shall, after having given notice to such adjoining owner or occupant, as provided in section thirteen hundred and ninety-three, examine such fence and ascertain the expense thereof; and if they shall adjudge such fence sufficient, they shall give to such party a certificate (1) under their hands of such decision, and of the amount of the expense of such

(1) *Form of Fence Viewers' Certificate of Decision under Section 1397.*

COUNTY OF —, }
Town of —. } ss.

Whereas, upon complaint duly made to us, the undersigned fence viewers of said town of —, by E. F., that G. H. had neglected to repair (*or rebuild*) that portion of the partition fence between adjoining lands in said town occupied by them several y, and which the said G. H. by law ought to maintain, we, after reasonable notice in writing duly served upon each party, proceeded, pursuant to said notice, on the — day of —, 18—, to examine said fence, and upon such examination did determine that the portion thereof which by law ought to be maintained by said G. H., being (*describe the portion of fence in question*), was insufficient, and did by an order dated the — day of —, 18—, * direct the said G. H. to repair (*or rebuild*) his portion of said partition fence within — days from the date of said order; and whereas, the said G. H. has failed to repair (*or rebuild*) his said portion of the partition fence, as directed by us, within the time limited in our aforesaid order, but after the expiration of the said time the said E. F. did repair (*or rebuild*) that portion of the said fence which the said G. H. was directed to repair (*or rebuild*), all which facts are sufficiently made to appear to us: ¶

Now, therefore, on the application of the said E. F., we, the said fence viewers, having, after reasonable notice* in writing duly served upon each party, met pursuant to said notice on the — day of —, 18—, and examined that portion of said partition fence so repaired (*or rebuilt*) by the said E. F., and having ascertained the expense thereof, do hereby adjudge the same to be sufficient as repaired (*or rebuilt*) by him, and do hereby certify that the value of such repairing (*or rebuilding*) is — dollars, and that our fees for services in this behalf are — dollars, and for services in the matter of said order made by (us) on the — day of — (see * above), are — dollars.

Given under our hands this — day of —, 18—.

— —, }
— —, } *Fence Viewers.*
— —, }

NOTE.—If the fence viewers signing the above certificate, and the order under section 1396, are not the same persons, the certificate will conform to the facts.

The last mentioned notice* in preceding form will be addressed to "G. H.," and should recite the facts as in the form down to the *, continuing: "You are hereby notified that we, the said fence viewers, will, on the — day of —, 18—, at — o'clock in the — noon, meet and examine the said portion of fence, so repaired by said E. F., and ascertain the expense thereof, at which time and place you may be heard, if you desire."

building or repairing, and the fees of the fence viewers who made such order, and of their own; and thereupon such party may demand double the amount of such ascertained expense, together with such fees, from such adjoining owner or occupant; and in case of neglect and refusal to pay the same for one month after so demanded the same may be recovered with interest at the rate of one per cent. a month and costs; such adjoining lands shall be liable to seizure and sale upon judgment so recovered, and shall in no case be exempt from any execution issued thereon.

Collection of double the amount, how recovered.

SECTION 1398. When, in any controversy that may arise between occupants of adjoining lands as to their respective rights in any partition fence, it shall appear to the fence viewers that either of the occupants had, before any complaint made to them, voluntarily erected the whole fence, or more than his just share of the same, or otherwise become proprietor thereof, the other occupant shall pay for so much as may be assigned to him to repair or maintain; the just value thereof which he ought to pay shall be ascertained by proceeding as prescribed in the next preceding section (1.)

Fences owned unequally, how divided and cost of adjusted.

(1) *Form of Fence Viewers' Determination under Section 1398.*

COUNTY OF —, }
Town of —, } ss.

Controversy having arisen between A. B. and C. D., occupants of adjoining lands in the town of —, as to their respective rights in a certain partition fence between the same, described as follows: (*locate fence*), and it appearing to the undersigned fence viewers of said town that said A. B., before any complaint made to the fence viewers, had voluntarily erected the whole of said partition fence (*or had erected more than his just share of said fence*), *or had become proprietor of said fence (or of a part therein, stating the part)* by purchase, etc. (*as the case may be*).

Now, therefore, on due application of the said A. B., we, the said fence viewers, having, after reasonable notice in writing duly served upon each said party, met, pursuant to said notice, on the — day of —, 18—, and examined the said partition fence, do hereby divide the same, and assign to the said A. B. as his share of said fence, the following, viz.: (*give location and length*), to be repaired and maintained by him; and to C. D. as his share of said fence, the following, viz.: —, to be repaired and maintained by him.

And we do hereby certify that we have ascertained the just value of the portion of said partition fence hereinabove divided, and assigned to said C. D. and which he ought to pay to said A. B. and that the value of such portion is — dollars.

Given under our hands this — day —, 18—.

— —, }
— —, } *Fence Viewers.*
— —, }

Proceedings to
apportion cost
of fence when
uninclosed
lands are after-
wards inclosed.

SECTION 1399. When any uninclosed land shall afterwards be inclosed, the owner or occupant thereof shall pay for one-half of each partition fence standing upon the line between his land and the inclosure of any other owner or occupant, unless such line shall have been theretofore divided, in which case he shall pay the value of the fence on the part of such line so assigned to him; and the value thereof at the time, in either case, shall be ascertained on the application of either, as provided in section thirteen hundred and ninety-seven, in case the parties do not agree; and if such owner or occupant shall neglect or refuse to pay the same for sixty days, after the value has been so ascertained and demand made, the proprietor of such fence may recover such value with the fence viewers' fees and costs (1).

(1) *Form of Fence Viewers' Determination under Section 1399.*

COUNTY OF _____, }
Town of _____, } ss.

Whereas, A. B. heretofore inclosed certain lands, owned (or occupied) by him in the town of _____, and erected a partition fence between the same and uninclosed adjoining lands, owned (or occupied) by C. D. in the same town, the said fence so erected by A. B. being described as follows, viz.: (*describe same*); and whereas, afterwards, the said C. D. inclosed his lands aforesaid, and a disagreement has arisen between the said parties as to the just proportion of the value of the said division fence to be paid for by the said C. D.:

Now, therefore, upon due application made by said A. B., we, the undersigned, fence viewers of said town, having, after reasonable notice in writing duly served upon each party, met, pursuant to said notice, on the _____ day of _____, 18—, and examined the said partition fence, do hereby certify that the just proportion of said value to be paid by the said C. D. to the said A. B., as ascertained by us, is _____ dollars, and that our fees and costs in this behalf amount to _____ dollars.

Given under our hands, this _____ day of _____ 18—.

_____, }
_____, } *Fence Viewers.*
_____, }

In case of a previous division of the line, say: *And it appearing that the line upon which said partition fence stands has been heretofore divided and assigned to the respective owners (or occupants) as follows: To A. B. _____ (*designate the part*), and to C. D. _____, and that a disagreement has arisen between said parties as to the value of the fence on the part of such line so assigned to said C. D.:

Now, therefore, upon due application of the said A. B., we, the undersigned, fence viewers of said town of _____, having, after reasonable notice in writing duly served upon each party, met, pursuant to said notice, on the _____ day of _____, 18—, and examined the part of said fence standing upon the line so

SECTION 1400. If any person shall determine not to keep inclosed any part of his land adjoining any partition fence, and shall give six months' notice (2) of such determination to all the adjoining occupants of lands, he shall not be required to keep up or maintain any part of such fence during the time his lands shall lie open; but when any party shall open his inclosure, he shall not take away any part of the partition fence belonging to him, if the owner or occupant of the adjoining land will pay the value thereof, to be ascertained on the application of either party, as provided in section thirteen hundred and ninety-seven, within two months after it is so ascertained; otherwise, in such case, he may remove the same (1) (a).

Partition fences, how disposed of when lands to be no longer inclosed.

57 Wis. 320.

as aforesaid assigned to the said C. D., and having ascertained the value thereof, do hereby certify that the value of such part is ——— dollars, and that our fees and costs in this behalf amount to ——— dollars.

Given under our hands this ——— day of ———, 18—.

—————, }
 ————, } *Fence Viewers.*
 ————, }

(2) *Form of Notice of Determination Not to Keep Land Inclosed.*

To A. B.:

Notice is hereby given to you, that I have determined not to keep inclosed any of my lands adjoining the partition fence between lands occupied by us in the town of ———, in the county of ———, the said fence being described as follows; (describing it).

C. D.

Dated this ——— day of ———, 18—.

(1) *Form of Notice of Application under Section 1400.*

To G. H.:

Application having been duly made by E. F. to us, the undersigned, fence viewers of the town of ———, to ascertain the value of certain partition fence belonging to him, and being between his land and adjoining land owned (or occupied) by G. H., in said town, such fence being described as follows: (describing); and it appearing that the said E. F. has given to the said G. H., more than six months since, notice of his determination not to keep inclosed any part of his land adjoining the said partition fence:

You are therefore notified that we will, on the ——— day of ———, 18—, at ——— o'clock in the ———noon, meet

(a) A line fence between adjoining owners or occupants cannot be lawfully removed by either party, without the consent of the other, except in cases provided for in section 1400. [*Staley v. Bemis*, 57 Wis. 815.]

Proceedings
where fence is
boundary line
between towns.

SECTION 1401. In all cases where the line upon which a partition fence is to be made or to be divided is the boundary line between towns, or partly in one town and partly in another, a fence viewer shall be taken from each town; and divisions of such fences, by them or by agreement of the parties, shall be recorded in the office of the clerk of each town.

Fees of fence
viewers.

SECTION 1402. Each fence viewer shall be paid by the person employing him, at the rate of one dollar a day for the time he shall be so employed; and if such person shall neglect to pay the same, within thirty days after the service shall have been performed, each fence viewer having performed any such service may recover double the amount of such fees. Any fence viewer who shall, when requested, unreasonably neglect to perform any duty required of him in this chapter, shall forfeit five dollars, and shall also be liable to the party injured for all damages consequent upon such neglect. In the performance of any duty under this chapter they may administer oaths.

Penalty for
neglect of duty.

Record of par-
titions as evi-
dence.

SECTION 1403. Every partition of a division fence or line, made by fence viewers, signed and recorded as hereinbefore provided, and the record, or a certified copy thereof, shall be presumptive evidence of the regularity of all the proceedings prior to the making thereof.

and view the said partition fence, and ascertain the value of the same, when and where you may be heard, if you desire.

Dated this _____ day of _____, 18—.

_____, }
_____, } *Fence Viewers.*
_____, }

NOTE.—Notice of determination not to keep land inclosed to be annexed to the following certificate:

Form of Fence Viewers' Certificate as to Value of Fence.

COUNTY OF _____, }
Town of _____, } ss.

We, the undersigned, fence viewers of the town of _____, in said county, do hereby certify that upon application of E. F., to us duly made, and in accordance with the notice hereto annexed, duly served upon each party, we have examined the partition fence in such notice mentioned, belonging to the said E. F., and that its value, as ascertained by us, is _____ dollars; that the fees for our services herein amount to _____ dollar.

Dated this _____ day of _____, 18—.

_____, }
_____, } *Fence Viewers.*
_____, }

OF THE PRESERVATION OF THE PUBLIC HEALTH.

(Chapter LVII, R. S. 1878)

SECTION 1411. The town boards, village boards and common councils of every town, village and city, shall be boards of health, when not otherwise provided in city or village charters, and as such, shall exercise all the powers and perform all the duties prescribed in this chapter, within the limits of the towns, villages and cities, of which they are such officers.

Municipal
board of health,
their powers
and duties.

87 Wis. §18.

SECTION 1412. Every board of health may take such measures and make such rules and regulations as they may deem most effectual for the preservation of the public health, and for that purpose may appoint a physician, who shall be the health officer of the territory within the jurisdiction of the board, and who shall hold his office during their pleasure (1); they may also appoint so many persons to aid them in the execution of their powers and duties as they may think proper, and shall regulate the fees and charges of every person so employed by them; and they may examine into all nuisances, sources of filth, and causes of sickness, and make such rules and regulations respecting the same as they may judge necessary for the public health and safety of the inhabitants.

May appoint
a physician
and others to
assist, and fix
fees.

(1) *Form of Appointment of Health Officer.*

COUNTY OF _____, }
Town of _____, } ss.

A. B., a physician of _____, is hereby appointed health officer of the (said) town of _____.

This appointment is to continue during the pleasure of the board of health of said town for the time being.

Given under our hand this _____ day of _____, 18—s.

_____, }
_____, } *Board of Health*
_____, } *of the Town of*
_____, }

Their rules,
orders, etc.,
how published.

SECTION 1413. Notice shall be given by the board of health of all orders and regulations made by them, by publishing the same in some newspaper, if there be one published in such town, village or city; if there be none, then by posting up the same in five public places therein; and such publication of said orders and regulations shall be deemed a legal notice to all persons.

May abate
nuisance; pen-
alty for neglect
to remove.

SECTION 1414. Whenever any nuisance, source of filth, or cause of sickness shall be found on private property, the board of health shall order (1) the owner or occupant thereof to remove the same, at his own expense, within twenty-four hours, and if he shall refuse or neglect to comply, he shall forfeit not less than five nor more than fifty dollars; and said board may cause the same to be removed, and may recover all expense incurred thereby from the said owner or occupant, or from such other person as shall have caused or permitted the same.

May enter
buildings, etc.
when neces-
sary.

SECTION 1415. Whenever the board of health shall think it necessary for the preservation of the health of the inhabitants to enter any building or vessel in their city, village, or town, for the purpose of examining into and destroying, removing or preventing any nuisance, source of filth, or cause of sickness, and shall be refused such entry, any member of the board may make complaint under oath to a justice of the peace of his county, whether such justice be a member of such board

(1) *Form of Order to Remove Nuisances etc.*

COUNTY OF _____. }
Town of _____. } ss.
To Y. Z.

Whereas (*specify the unwholesome substance*) has been found on _____ (*state the place*), owned or occupied by you; or, whereas, the building situated on _____, in said town, owned or occupied by you, contains a large quantity of decayed vegetables, etc., endangering the public health; or is used as a slaughter-house, and is a source of filth and a cause of sickness (*or, as the case may be*):

You are hereby ordered to remove the said (*carcass*) or decayed vegetables, etc., or to remove (*cleanse or abate the business of*) the said slaughter-house, at your own expense, within twenty-four hours after the service of this order upon you.

Given under our hands this _____ day of _____, 18—.

_____, } *Board of Health*
_____, } *of the Town of*
_____, }

or not, stating the facts in the case, so far as he has knowledge thereof (1). Such justice shall thereupon issue a warrant, directed to the sheriff or any constable of the county, commanding him to take sufficient aid, and being accompanied by two or more of the board of health, between the hours of sunrise and sunset, to repair to the place where such nuisance, source of filth or cause of sickness complained of may be, and the same destroy, remove or prevent under the direction of the members of such board of health (2).

SECTION 1416. When any person coming from abroad, or residing in any town, shall be infected or shall lately have been infected with the small-pox or other contagious disease dangerous to the public health, the proper board of health may immediately cause him to be removed to a sep-

Where may remove person infected with contagious disease.

37 Wis. 318.

(1) *Form of Complaint under Section 1415.*

STATE OF WISCONSIN, }
County of —, } ss.

A. B., being duly sworn, under oath complains and says, that he is a member of the board of health of the town of —, in said county; that said board, on the — day of —, 18—, thinking it necessary for the preservation of the health of the inhabitants of said town, did attempt to enter a certain building situate (*state where*) in said town, owned (or occupied) by —; or to enter a certain vessel, to wit: the — (*giving name, if any*), lying at —, in said town, owned by (or, in charge of) —, for the purpose of examining into and destroying (removing or preventing, etc., *state the nuisance, source of filth or cause of sickness*), and were then and there refused such entry by the said (*owner, occupants or other person*). Wherefore, the said complainant asks that a warrant may issue as in such case by statute provided.

A. B.

Subscribed and sworn to before me, this — day of —, 18—, —, Justice of the Peace.

(2) *Form of Warrant.*

STATE OF WISCONSIN, }
County of —, } ss.

THE STATE OF WISCONSIN to the sheriff or constable of said county:

Whereas, A. B., a member of the board of health of the town of —, in said county, has this day made complaint under oath to me, stating that (** here set out the complaint*), and has applied for a warrant to be issued, as provided by law. Now, therefore, you are hereby commanded to take sufficient aid, and being accompanied by two or more of the board of health of said town of —, between the hours of sunrise and sunset, to repair to the said building (or, vessel), and the said (*here specify the nuisance as in the complaint*) destroy (remove or prevent), under the direction of the members of such board of health, and make return of your doings on this warrant.

Given under my hand this — day of —, 18—, —, Justice of the Peace.

arate house, if it can be done without danger to his health; and if such person cannot be removed without danger to his health, such board shall make provision for him in the house where he may be; and in such case, they may cause the persons in the neighborhood to be removed, and may take such other measures as they may deem necessary for the safety of the inhabitants; and in either case, they shall provide for him nurses and necessaries, which shall be a charge to the person so taken care of, or against any other person, who may be liable for his support; and any two justices of the peace may, upon application of the board of health, make an order under their hands, directed to the sheriff or any constable of the county, requiring him, under the direction of the board of health, to remove any person infected with any contagious disease, and to provide nurses, attendants and other necessaries for the accommodation, safety and relief of such infected person (a).

Persons infected may be removed from jail or poor-house.

SECTION 1417. When a person confined in a common jail, or poor-house, has a disease which, in the opinion of the physician of the board of health, or such other physician as it may consult, is dangerous to the safety and health of the other prisoners or inmates, or of the inhabitants of the neighborhood, the board shall, by its order in writing, direct the removal of such person to some hospital or other place of safety, there to be provided for and securely kept so as to prevent his escape, until its further order. If such person recover from the disease, he shall be returned to such jail or poor-house; and if such person so removed is committed by the order or judgment of any court, or under judicial process, the order for his removal, or a copy thereof, shall be returned by the board, with their doings thereon, to the officer or court under whose order, judgment or process such person was committed. No prisoner so removed shall thereby commit an escape.

Slaughter houses, where built; when removed.

SECTION 1418. (As amended by Ch. 18, Laws 1879.) No person shall erect, maintain or keep

35 Wis. 298.

(a) The statute does not make the public primarily liable for the expense of nurses, attendants, etc., in the care of persons infected with contagious disease

There is no purpose to shift responsibility for the expense of caring for the sick, to impose the cost on the public, or to lessen the duties due by others to the sufferers. [*Kallock v. The City of Stevens Point*, 37 Wis. 343.]

any slaughter-house upon the bank of any river, running stream or creek, or throw or deposit in such running stream any dead animal or any part thereof or any of the carcasses or offal therefrom into or upon the banks of any such river, stream or creek, which shall flow through any city or village, or erect, maintain or use any building for a slaughter-house, within the limits of any village incorporated or unincorporated, or any organized town containing two hundred or more inhabitants, or at any place within one-eighth of a mile of any dwelling house or building used as a place of business; and every person who shall violate any of the provisions of this section shall forfeit for each such violation not less than ten, nor more than one hundred dollars; and the mayor of the city, president of the village and the chairman of the town in which any such slaughter-house is located, shall have power to, and shall cause the same to be immediately removed; and every such officer who shall knowingly permit any slaughter-house to be used or maintained, contrary to the provisions of this section, shall forfeit not less than fifteen, nor more than fifty dollars. In any county containing a population of one hundred thousand or over, all the provisions of this section relating to slaughter-houses shall apply to all establishments and manufactories in which dead animals or any part thereof, or any of the carcasses or offal therefrom, are collected and converted into marketable products.

BOARD OF HEALTH — CHAPTER 167, LAWS 1883.

SECTION 1. Every town board, village board or common council of every town, village or city in this state shall hereafter, within thirty days after each annual election, organize themselves into a board of health, or shall appoint from their own members a suitable number of competent persons, who shall organize by the election of a chairman and clerk, and exercise all the powers and perform all the duties of a board of health for such town, village or city, as defined in the revised statutes, and every board of health shall, within ten days after being organized as above specified, ap-

Protection of
the public
health.

point (1) a competent and proper person who shall be, whenever the same is practicable a reputable physician who shall be the health physician and health officer of the town, village or city, and who shall hold office during the pleasure of the board, and until his successor shall have been duly appointed and qualified; and in case of the occurrence of a vacancy by reason of the death, resignation, removal or refusal to serve, of any such health officer, the board of health shall, within twenty days thereafter, fill such vacancy by making a new appointment, as herein provided, and immediately upon the appointment of any health officer as herein provided, the board of health making the same shall transmit to the office of the state board of health the name and post-office address of the health officer so appointed, and all health officers appointed under the provisions of this act shall be *ex officio* members and executive officers of the boards by whom they are appointed; provided, that this section shall not apply to any town, village or city which by its act of incorporation, or amendment thereto, shall have provided for the appointment of a health board and a health officer.

Duties of
health officers.

SECTION 2. It shall be the duty of every health officer, appointed under the provisions of this act, or by the provisions of special charters, upon the appearance of small-pox, diphtheria, scarlet fever, Asiatic cholera or other dangerous contagious disease in the town, village or city under his supervision, immediately to investigate all the circumstances attendant upon the appearance of such disease, and to make full report thereof to the board of which he is the executive officer and also to the state board of health, and it shall be the duty of such health officer at all times promptly to take such measures for the prevention, suppression and control of the diseases herein named as may in his judgment be needful and proper, subject to the approval of the board of which he is a member, and it shall be the duty of every health officer to keep and transmit to his successor in office a record of all his official acts; and the salary or other compensation to be paid to every

(1) The forms necessary under this act will be found under pages 406-407 *et. seq.*

health officer appointed under the provisions of this act, shall be established by the board of health by whom such officer shall be appointed.

SECTION 3. Whenever any physician, residing and practicing in this state, shall know that any person whom he shall be called upon to visit is sick with small-pox, scarlet fever, diphtheria, Asiatic cholera or other dangerous contagious disease, he shall immediately give notice thereof to the board of health of the town, village or city in which such sick person shall be at the time, and any physician who shall refuse or neglect to give such notice for a period of forty-eight hours shall, on conviction thereof, be liable to a penalty of not less than five (\$5) nor more than twenty-five dollars (\$25) for each day of such refusal or neglect after the expiration of said forty-eight hours; provided, that the notices herein required may be sent by mail or, except in the case of cities, may be given or left at the residence of any member of the board of health, and notices so mailed or given within the time specified shall be deemed a compliance with the provisions of this section.

Further duties.

SECTION 4. All expenses incurred in carrying out the provisions of this act, or any of them, shall be paid by the town, village or city by which, or on behalf of which, such expenses shall have been incurred.

Expenses, by whom paid.

SECTION 5. Upon complaint made in writing, under oath, by any citizen of the state, before any magistrate or justice of the peace, charging the commission of an offense against any of the provisions of this act in his county, it shall be the duty of the district attorney to prosecute the offender, and all sums recovered under the provisions of this act shall be for the benefit of the school fund.

District attorney to prosecute.

SECTION 6. This act shall take effect and be in force from and after its passage and publication, and all acts and parts of acts conflicting with the provisions of this act, in so far as they contravene the same, are hereby repealed.

* * * * *

SECTION 4008. Any person who shall willfully violate any law relating to the public health, or regulation of any board of health, lawfully made

Violating orders of board of health, punished.

and duly published, shall be punished by imprisonment in the county jail, not more than three months, or by fine not exceeding one hundred dollars.

NOTE.—For duties of boards of health upon visitation by Asiatic Cholera see Sec. 4, Chap. 255, L. 1885.

OF CEMETERIES.

(Chapter LIX, R. S. 1878.)

TOWN CEMETERIES.

SECTION 1438. The town board of any town, when so instructed by a lawful vote of the electors thereof, shall purchase in the name of such town, suitable grounds to be used exclusively as a town cemetery, at a price not exceeding the price limited by such vote. Such board shall cause the same, from time to time, to be surveyed, divided and platted into lots of such size and with such avenues, alleys and walks as they shall direct, and a map thereof to be filed in the office of the town clerk, and inclose such grounds with a suitable fence as soon as practicable.

Cemetery grounds, how purchased and platted.

SECTION 1439. After filing such map, the town board may, in the name of the town, sell and convey the lots designated thereon, upon such terms and subject to such conditions and restrictions as they shall prescribe; but every such conveyance (1) shall be limited to be expressly for burial purposes and no other, shall be signed by the chair-

Lots conveyed by town board or mayor, etc.

(1) *Form of Conveyance of Cemetery Lot.*

Know all men by these presents, that the town of —, in the county of —, and the state of Wisconsin, in consideration of — dollars to said town paid by Y. Z., of —, the receipt whereof is hereby acknowledged, doth hereby sell and convey unto the said Y. Z., all that lot of ground situate, lying and being in the town cemetery of said town of —, known and designated on a map of said cemetery filed in the office of the town clerk of said town, by the number one hundred and ten (110), together with the appurtenances thereunto belonging, or in anywise appertaining.

To have and to hold the same unto the said Y. Z. and his heirs forever, subject to the following conditions and restrictions, namely: that this conveyance is limited to be expressly for burial purposes and no other. (*Insert other conditions or restrictions, if any.*)

In witness whereof, the said town of — has caused

man and attested by the town clerk. Whenever any such town cemetery is or shall become embraced within the limits of any city, the duties and powers of the town board relating to such cemetery shall be exercised by the common council of such city, and the conveyances of lots shall be executed by the mayor thereof in the name of the town, and attested by the city clerk, but the right of burial in such cemetery shall not be changed or impaired.

Proceeds of
sale, how ap-
plied.

SECTION 1440. The proceeds of sales of such lots shall be applied in the payment of debts incurred by the town in fencing and embellishing such grounds and the avenues leading thereto, in defraying the necessary expenses of the management and care of the same, or for reimbursing the town for the purchase money thereof, and for no other purpose.

* * * * *

Board to con-
trol ornamenta-
tions and erec-
tion of monu-
ments, etc.

SECTION 1453. No person shall plant in any cemetery any trees or shrubs, or erect any wooden fences or structures, or any offensive or dangerous structures, headstones or monuments, or maintain or continue the same, if planted or erected in violation of such regulations as the proper governing board of the association, town, village or city having such cemetery shall from time to time prescribe; and any such board may require any lot owner or occupant to remove, rearrange, rebuild or repair, any such trees or shrubs planted, fences, structures, headstones or monuments, so as to comply with such regulations as they shall have pre-

these presents to be subscribed by its chairman, and to be attested by the clerk thereof, this _____ day of _____, 18—.

A. B., Chairman. [SEAL.]

Attest: E. F., Town Clerk.

Signed, sealed and delivered in presence of:

M. N.

O. P.

STATE OF WISCONSIN, } ss.
County of _____.

Personally came before me this _____ day of _____, 18—, the above named A. B., chairman, and E. F., town clerk, of the town of _____, in said county, to me known to be the persons who executed the foregoing instrument, and acknowledged the same.

(Insert designation of officer.)

scribed, by giving reasonable personal notice in writing so to do, if a resident of the county, or in any other case, by publishing notice, at least once a week for three successive weeks, in a newspaper of the county; and in case of his refusal or neglect to comply for twenty days thereafter, such board may cause the same to be done and recover the expense thereof from the person liable to such duty.

SECTION 1454. No person, association or corporation shall lay out or establish any cemetery grounds, or use any lot or grounds for burial purposes (except such as are now in use for that purpose), within the limits of any recorded plat of any city or village, or of any recorded addition thereto, when such cemetery, lot or grounds shall be within one mile of any lot or block therein, on which any building may then be erected; and no person, association or incorporation shall lay out or establish any cemetery grounds, or use any grounds for burial purposes, except such as are now in use for that purpose, without the limits of such plat or addition thereto, and within two hundred rods of any inhabited dwelling, standing on any lot or block in such city or village or addition thereto, without first obtaining the consent of the municipal authorities thereof; nor within two hundred rods from the institutions for the deaf and dumb, for the blind, the hospitals for the insane, or the industrial school for boys, without the consent of the trustees having charge thereof. Any violation hereof shall be deemed a nuisance, and may be restrained by injunction at the suit of any party aggrieved.

SECTION 1455. After there shall have been an interment in any cemetery lot conveyed by any cemetery association, such lot shall, while any person is buried therein, be inalienable; and on the death of the owner thereof, descend to his heirs; but any one or more of such heirs may release to any other heir his interest therein; which release, when made, shall be filed in the office of the town or city clerk within which such cemetery shall be situated. The body of any deceased person shall not be interred in any such lot, unless it be the body of a person having at the time of such decease an interest therein, or a relative or the husband or wife of such person, or his or her rela-

Cemetery grounds, where located.

Lot, when inalienable.

tive, except by the consent of all persons having an interest in such lot.

May hold property in trust.

SECTION 1455a (chapter 112, Laws 1881). 1. Any town, village or city in this state owning land used exclusively for cemetery purposes, may take and hold in trust, and loan, invest or otherwise dispose of according to the trust, money or other property, for the purpose of expending the income derived therefrom, or the proceeds thereof, in embellishing and keeping in good order such lot or lots and the adjacent walks and drives in its cemetery, as the donor may designate.

2. The supervisors of any such town, the president of any such village, and the mayor and common council of any such city, may appoint a commissioner of any such trust fund or funds, and require such commissioner to give bond to said town, village or city, in such sum, with such sureties as the supervisors, president or mayor and common council may designate and approve, and may at any time when deemed advisable, require such bond to be increased in amount, and may require additional sureties, which bond shall be conditioned for the faithful discharge of the trust reposed, and to invest, hold, account for and pay over to his successor in office, such fund or funds, and the increase thereof.

3. Such commissioner shall hold his office until his successor shall be appointed and qualified.

IN AID OF AGRICULTURE.

(Chapter LXI, R. S. 1878.)

OF MARKS AND BRANDS.

SECTION 1468. Every town clerk shall, on the (1) application of any person residing in his town, record (2) a description of the marks or brands with which such person may be desirous of marking his horses, cattle, sheep or hogs; but the same description shall not be recorded or used by more than one resident of the same town. If any person shall mark any of his horses, cattle, sheep, or hogs, with the same mark, or brand previously recorded by any resident of the same town, and while the same mark or brand shall be used by such resident, he shall forfeit for every such offense, five dollars; if any person shall willfully mark or brand any of the horses, cattle, sheep or hogs of any other person with his own mark or brand, he shall forfeit for every such offense ten dollars; and if any person shall willfully destroy or alter any mark or brand upon any of the horses, cattle, sheep or hogs of another, he shall forfeit ten dollars, and pay to the party injured double damages.

Where recorded.

Penalty for wrongfully using or injury.

(1) *Form of Application for Recording of Brand.*

To A. B., town clerk of the town of ———:

I, the undersigned, C. D., a resident of said town, hereby request that you record the following description of the marks (or brands) with which I am desirous of marking my horses, cattle, sheep and hogs, viz.: (give description of brand or mark).

(2) *Form of Record.*

COUNTY OF ———, } ss.
Town of ———, }

On the application of C. D., a resident of said town, the following is recorded this ——— day of ———, A. D. 18—, as a description of his mark (or brand) for marking his horses, cattle, sheep and hogs (here give description).

A. B., Town Clerk.

TREE BELTS.

Bounty for tree
belts, etc.

SECTION 1469. Every owner or possessor of five acres of land or more who shall successfully grow by planting with forest trees (a), consisting of the following kinds, or such species thereof, as will grow to the height of fifty feet or more, viz: Arbor vitæ, ash, balsam, fir, basswood, beech, birch, butternut, cedar, black cherry, chestnut, coffee tree, cucumber tree, elm, hackberry, hemlock, hickory, larch, locust, maple, oak, pine, spruce, tulip tree, and walnut, tree belts in the manner and form prescribed in the next section, shall be entitled to have the land on which such tree belts grow, exempted from taxation from the time the trees commence to grow until they shall reach the height of twelve feet, and after they shall have attained that height, to receive an annual bounty of two dollars per acre for each acre so grown.

Where and how
planted.

SECTION 1470. Such tree belts shall be planted on the west or south sides of each tract of land, be of uniform width throughout their entire length, contain not less than eight trees, at nearly equi-distance, on each square rod of land, and be at least thirty feet wide for each five acre tract, sixty feet wide for each ten acre tract, and one hundred feet wide for each square forty acre tract, and upon all square tracts of land, upon two sides thereof. All tree belts owned by the same land owner must be planted not to exceed a fourth of a mile apart, and on the west and south sides of every square forty acres, and shall not exceed one-fifth of the entire tract of land on which the same are planted; *provided*, that when the east and north sides, or either, of any tract of land is bounded by a public highway, a tree belt one rod wide may be planted next to said highway, although it, with the others on the west and south sides, shall exceed one-fifth of the whole tract; and tree belts may be planted on any other lines within each forty square acres, by permission of the assessor.

When assess-
or to inspect
and his duty.

SECTION 1471. The assessor shall, upon the application of the owner thereof, in each year, at the time of assessing the personal property in his

(a) Penalty for malicious injury to trees, shrubs, etc. (Section 4441, R. S.)

district, make a personal examination of all tree belts for which bounty or exemption from taxation is claimed, and ascertain whether they have been planted as required in the preceding section, and are thriftily growing; and if he shall be satisfied thereof, he shall not assess the same for taxation unless the trees therein shall have attained the height of twelve feet; and in that case, he shall deliver to the owner a certificate (1) that he is entitled to an annual bounty of two dollars for each acre of such tree belts, stating therein the whole amount of such bounty, and giving a description of the entire land of which the tree belts form a part, and the amount of such bounty shall be credited by the treasurer in payment of any taxes assessed on such land, as so much cash; but if not so satisfied, the assessor shall assess the land for taxes, or refuse to grant any certificate for the bounty, as the case may require; and if, after any certificate for such bounty shall have been issued, the owner of any such tree belts shall suffer the same to die out by want of cultivation or otherwise, or shall cut the same down, or in any other way allow the same to be so thinned out, that in the opinion of the assessor he ought no longer to receive such bounty, he shall give the treasurer

How bounty
may be forfeit-
ed

(1) *Form of Assessor's Certificate.*

COUNTY OF —, }
Town of —. } ss.

I, A. B., assessor of the town of —, do hereby certify that H. S., the owner of the S. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of section —, in township No. —, of range No. —, in said town of —, containing ten acres, has planted on the west and south sides of said tract, tree belts of forest trees of uniform width throughout the entire length thereof, consisting of arbor vitæ (or other kinds), containing not less than eight trees, at nearly equi-distance, on each square rod of land, and being — (not less than sixty) feet wide, and that said tree belts occupy (not to exceed) one fifth, or two acres, of the entire tract of land on which the same are planted, as aforesaid.

And having, upon the application of said H. S., made personal examination of said tree belts at the time of assessing the personal property in my district afore-said, for the year 18—, and ascertained that the trees therein have been planted as required by law, and have attained the height of twelve feet, and are thriftily growing, I hereby certify that the said H. S. is entitled to an annual bounty of four dollars, being two dollars for each acre of such tree belts, to be credited by the treasurer in payment of any tax assessed on said lands, as so much cash, as provided by section 1471, revised statutes.

Given under my hand this — day of —, 18—.

— —, Assessor.

written notice (1) thereof, and thereafter no further bounty shall be allowed until such owner shall again receive a certificate therefor.

* * * * *

THE PREVENTION OF THE SPREAD OF NOXIOUS WEEDS.

Prevention of
the spread of
noxious weeds.

SECTION 1481. If the occupant of any such lands, or any such overseer, shall fail to so destroy any such weeds as so required, such occupant shall forfeit not less than five nor more than fifty dollars. The chairman and each supervisor of every town shall prosecute promptly for every such forfeiture which he shall have reason to believe to have been incurred (a).

Destruction of
weeds.

SECTION 1481a. (Chapter 233, Laws 1885.)
1. Every person and corporation shall destroy upon all lands which he or they shall occupy or control, all weeds known as Canada thistles, burdock, teasel, white daisy and snap-dragon at such time and in such manner as shall effectually prevent them bearing seed. In like manner shall he or they also destroy any of the above mentioned weeds standing or growing as far as the center of the public highway, lanes or alleys adjoining the lands owned or controlled by him or them.

Penalty for
failure to de-
stroy.

2. If the occupant of any such lands shall fail to so destroy such weeds as so required, after having six days' notice in writing by the commissioner of Canada thistles, such occupant shall be

(1) *Form of Assessor's Notice under Section 1471.*

COUNTY OF —, }
Town of —, } ss.

To — —, treasurer:

You are hereby notified that in the opinion of the undersigned, assessor of said town of —, H. S., to whom a certificate was issued, dated the — day of —, 18—, entitling him to a bounty for growing trees upon his land. described as —, ought no longer to receive such bounty, on account of his having suffered the said trees to die out for want of cultivation (or otherwise; or, on account of his having cut the same down, or allowed the said trees to be thinned out by fire, or destroyed by cattle running at large, etc.).

Dated this — day of —, 18—.

— —, Assessor.

(a) Section 1481 R. S. is retained, because ch. 233, L. 1885, makes no provision for bringing suit to collect forfeiture imposed.

fined five dollars for the first offense, and ten dollars for each offense thereafter.

3. There shall be appointed by the town supervisors of each town, or by the city council of any city, as the case may be, some competent person styled, "Commissioner on Canada Thistles," who shall be required to take the same oath as town officers, and shall hold his office for one year and until his successor is appointed and qualified. The board may for any good cause, remove said commissioner and appoint a successor to serve during the unexpired term.

Commissioner shall be appointed.

4. The commissioner shall carefully inquire concerning the existence of noxious weeds in his township or precinct, and in case any person, persons or corporation occupying or controlling any lands within this state, shall neglect to destroy any Canada thistles, burdock, teasel and snap-dragon, growing on any lands owned or controlled by him or them, or on any highway, lane or alley adjoining such lands, it shall be the duty of the commissioner to destroy or cause to be destroyed, all such weeds. He shall spend as many days as the supervisors or city council may deem necessary, and for each day so spent, shall receive one dollar and a half per day, and one half of all the fines collected, upon presentation of his account therefor, verified by his oath, and specifying by separate items against each piece of land, describing the same; and the respective amounts shall be placed on the next tax roll in a separate column headed, "For the destruction of weeds," as a tax against the lands upon which such weeds were destroyed, and be collected as other taxes.

Duty of commissioner.

5. It shall be the duty of the chairman of every town board at the annual town meeting of each year, to read aloud to such meeting the whole of this act.

Duty of the chairman.

6. All previous acts in relation to noxious weeds, and all amendments thereto are hereby repealed.

OBNOXIOUS AND INFECTIOUS ANIMALS.

SECTION 1482. No stallion over two years old, nor bull over one year old, nor boar nor billy goat

Stallions, bulls, boars, and billy goats restricted under penalty.

NOTE.—Section 1480, R. S., is repealed by section 6, chapter 283, R. S. Whether section 1481, R. S., is likewise repealed is a question the compiler did not feel called upon to decide.

34 Wis. 649.
41 Wis. 616.

over [four months old, shall run at large; and if the owner or keeper shall, for any reason, suffer any such animal so to do, he shall forfeit five dollars to the person taking it up, and be liable in addition for all damages done by such animal while so at large.

May be taken
up and owner
notified.

41 Wis. 616.

SECTION 1483. Any person finding any such animal running at large may take it up, but shall within seven days thereafter notify the owner, if to him known, and request him to pay all reasonable charges for its keeping, besides such forfeiture for its taking up, and take such animal away within five days after being notified.

Notice how
given, if owner
unknown.

41 Wis. 616.

SECTION 1484. If the owner of such animal be unknown, the finder shall within ten days thereafter file a notice (2) thereof with the clerk of the

(1) *Form of Notice under Section 1483.*

To A. B.:

You are hereby notified, that on the — day of —, 18—, the undersigned took up one gray stallion over two years old (or bull, etc., as the case may be, describing the animal with reasonable certainty), owned by you, found on that day running at large in the town of —, in the county of —, which animal is now at — (describe premises); and you are hereby requested to pay my reasonable charges for keeping the same, to wit: the sum of — dollars, besides five dollars forfeiture given by law for the taking up of the same, and take said animal away within five days after the receipt of this notice, C. D.

Dated this — day of —, 18—.

(2) *Form of Notice under Section 1483.*

To whom it may concern:

Notice is hereby given that the undersigned did, on the — day of —, 18—, take up one gray stallion over two years old (or, bull, or goat, etc., describing by marks, natural or artificial, as near as practicable), found running at large on that day in the town of —, in the county of —, which animal is now at my residence, in the northwest qr. of the northwest qr. of section 10, etc., in said town, the owner of such animal being to me unknown. C. D.

Dated at —, this — day of —, 18—.

NOTE.—The above is to be filed within ten days with the clerk of the town in which the animal is taken up. If the animal is of less value than five dollars, the notice must also be posted in at least three places in such town. If the animal is of greater value than five dollars, the notice must be published for four successive weeks in a newspaper in the county.

The statute does not apply to a case where the animal escapes from the owner's inclosure without any fault on his part, and where every reasonable effort is made to recapture the animal as soon as its escape is discovered. [*Montgomery v. Breed*, 34 Wis. 649.]

NOTE.—By provisions of Chap. 467, Laws of 1883, it is made the duty of the State Veterinary Surgeon, upon request of Local Boards of Health, to visit and examine all suspected cases of contagious or infectious diseases among domestic animals.

This chapter makes farther provision for suppressing the spread of con-

town in which it is taken up, and if such animals be of less value than five dollars, shall post notice of their taking up in at least three places in such town; but if they exceed five dollars in value, he shall publish such notice for four successive weeks in some newspaper in the county; if there be none, he shall post such notices in the manner aforesaid. The notice shall briefly describe the animals by marks, natural or artificial, as nearly as practicable, and give the name and residence of the finder, and the time when taken up. A copy of it shall be forthwith sent by the town clerk to the county clerk, who shall file the same.

SECTION 1485. The finder shall, within one month from taking them up, if the animals be of the value of ten dollars or more, procure them to be appraised by a justice of the peace of such town; a certificate of such appraisal shall be signed by the justice and filed in the town clerk's office. The finder shall pay the justice fifty cents for the certificate, and ten cents per mile for every mile necessarily traveled in such service.

Appraisal of animals taken up, etc.

SECTION 1486. The owner or person entitled to the possession of any such animal, at any time within ninety days after such notice is filed with such town clerk, may have such animal restored to him, upon proving his right thereto and paying all lawful charges incurred in relation to the same. If such claimant and the finder cannot agree as to the amount of such charges, or for the use of such animal, either party upon notice to the other may apply to any justice of the peace of such town, to settle the same, who for that purpose may examine witnesses on oath. If any amount shall be found due to the finder over the value of the use of such animal, the same, with the costs of such adjudication (1), shall be a lien upon such animal.

Animals how restored to owner.

SECTION 1487. If no claimant for such animal shall cause its return to him as hereinbefore provided, and if such animal shall not have been ap-

Finder, when to become owner.

tagious diseases, but as no authority is conferred upon some authorities, except as specified above, it is therefore omitted.

NOTE.—For proceedings and form under sections 1485 and 1486, see form given under sections 1610 and 1611.

(1) Form of adjudication, see section 1611.

When animal
to be sold, etc.

Penalty for re-
fusal to sell.

Penalty for
taking from
the finder, and
for neglect of
finder.

41 Wis. 616.

Penalty for per-
mitting infect-
ed sheep run-
ning at large.

27 Wis. 427.

praised for more than ten dollars, the finder shall thereupon become the absolute owner thereof; but if such appraised value exceeds ten dollars, such animal shall be sold at public auction by the sheriff or any constable of the county on the request of the finder. Notice (1) thereof shall be given and the sale shall be conducted, and the same fees allowed therefor as in case of sales upon a justice's execution. The finder may bid at such sale, and shall at the time of sale deliver to such officer a statement in writing of his charges (2) which shall be filed by such officer with the town treasurer; and after deducting such charges, if just and reasonable, and the costs of the sale, the officer shall pay one-half of the remaining proceeds to the finder, and within ten days thereafter, the other half to the treasurer of such town for its use. If the finder of any such stray shall neglect or refuse to cause such sale to be made when required by law, he shall pay to the town the value of such stray, to be recovered in an action by the town.

SECTION 1488. If any person, without the consent of the finder, shall take any animal, lawfully taken up as aforesaid, without the payment of his lawful charges incurred in relation to the same, he shall be liable to such finder for the value of such animal. If the finder shall neglect to give the notices, procure the appraisals or perform any of the duties hereinbefore required of him, he shall be precluded from acquiring any right of property in such animal, or receiving any charges or damages relative thereto.

SECTION 1489. If the owner of any sheep infected with foot rot, or any contagious disease, shall permit them to be in any public highway, or off his premises in any place at any time, he shall forfeit ten dollars for each such sheep for each time the same shall be on such highway or off his premises, one-half of which shall be paid to the prosecutor; and if such owner shall, after request so to do, neglect to keep any such sheep within his inclosure, any person may take up the same, when so found, and put them in a secure inclosure,

(1) Form of notice of sale, see section 1612.

(2) Statement of charges, see section 1612.

other than a public pound. Such person shall then notify the owner thereof, within three days thereafter, and of the place where such sheep are confined; and such owner may obtain possession of the same within six days after being so notified, by giving a bond (1), with surety, to be approved by a justice of the peace of the county, conditioned that such owner will restrain such sheep from going at large, and will pay all damages sustained by any person by reason of their going at large, while so infected, and by paying the cost of taking up and keeping such sheep. Such bond shall be executed and delivered to the clerk of the circuit court as obligee therein; and an action may be maintained thereon in his name, for the benefit of any person injured by reason of a breach thereof. If such owner shall neglect to so obtain possession of said sheep, in the time and manner aforesaid, the same may be sold by

Such sheep may be taken up, and proceedings thereon.

(1) *Form of Bond under Section 1489.*

Know all men by these presents, that we, L. F. as principal, and F. C. as surety, of the town of —, in the county of —, are held and firmly bound unto B. G., clerk of the circuit court, in and for the said county of —, in the penal sum of (*sum to be specified by a justice of the peace of the county*) — dollars, to be paid to the said B. G. and his successors in office; for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this — day of —, 18—.

Whereas, the above bounden A. B. is the owner of certain sheep infected with "foot rot" (*or other contagious disease, naming it*), and has, after request so to do, neglected to keep such sheep within his inclosure, and the same were, on the — day of —, 18—, lawfully taken up and put in a secure inclosure by the said Y. Z. of said town, whereof the said Y. Z. duly notified the said owner on the — day of —, 18—, and the said A. B., being desirous to obtain possession of said sheep, as provided by law: Now the condition of this obligation is such, that if the said A. B. will restrain such sheep from going at large, and will pay all damages sustained by any person by reason of their going at large while so infected, then this obligation shall be void; otherwise of full force and effect.

Sealed and delivered in presence of:

—, —, [SEAL.]
—, —, [SEAL.]

I hereby approve the within and foregoing bond, and the sufficiency of the sureties thereon.

Dated this — day of —, 18—.

—, —,
Justice of the Peace.

NOTE.—Section 1489 does not plainly provide who shall fix the penal sum of the bond therein prescribed, but as the bond is to be approved generally by a justice of the peace, it is probably safe to leave to the justice the fixing of the amount.

any sheriff or constable of the county, upon like notice, and in the same manner and with the same fees as in cases of sales upon justice's execution, and the proceeds of sale, after deducting the costs thereof, and the expenses of keeping such sheep, shall be paid to the owner thereof; but the purchaser at such sale shall, as a condition thereof, in like manner, give the bond herein before provided for. The finder may bid at such sale.

Rams running
at large may be
taken up; own-
er liable for
damages.

SECTION 1490. If the owner of any ram shall suffer him to go at large or out of his inclosure, between the fifteenth day of July and the first day of December in the same year, he shall forfeit ten dollars for each time such ram shall be found at large, and taken up, one-half of which shall be paid to the prosecutor; and he shall also be liable for any damages sustained by any person in consequence of such ram running at large. Any person may take up such ram, and shall within twenty-four hours thereafter notify the owner thereof, if known, and the place where the same is secured; and if unknown, shall within the same time file with the town clerk a notice of such taking up, containing the marks of such ram, natural and artificial, if any; and also post copies of such notice in three public places in such town. The owner of such ram may, within six days after the filing and posting of such notices, pay or tender to the town clerk said forfeiture, and fifty cents for his fees, and thereupon said ram shall be restored to him; and the clerk shall forthwith pay one-half of said forfeiture to the person who took the same up, and the other half to the county treasurer. If such owner shall not so pay such forfeiture and fees in the time aforesaid, said ram shall become the property of the person so taking him up.

Diseased horses
restrained un-
der penalty.

SECTION 1491. If any person shall suffer to run at large, or keep in any place where other creatures can become infected thereby, any horse, mare, gelding, mule or ass that is known to him to be diseased with glanders, farcy, strangles, distempers or other infectious disease, he shall forfeit for each such offense fifty dollars; and shall be liable to all persons injured thereby, for the damages by them sustained.

SECTION 1492. (As amended by ch. 121, L. of 1882.) No person shall bring into this state, or

own or have in his possession, any diseased Texas or Cherokee cattle, and no person shall bring into this state any swine diseased with hog cholera or any kindred diseases, or remove from any point within the state to another point within the state any swine so diseased, and every person who shall violate the provisions of this section shall be punished as provided by law, and be liable to any person injured thereby for the damages by him sustained.

Penalty for bringing diseased cattle into state.

* * * * *

SECTION 4605. Any person who shall suffer to run at large, or who shall keep in any place where other animals can have access to or become infected by them, any horse, mare, mule, ass, ox, bull, cow, sheep, or other domestic animal, owned by him, or in his care or possession, and known by him to be affected by glanders, farcy or other infectious or contagious disease, or who shall bring into, own, or have in his possession in this state any diseased Cherokee or Texas cattle, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding two hundred dollars.

Permitting diseased animals to run at large, punished.

NOTE.—The forms given under sections 1483 and 1484 will answer, with slight change, for the notices required to be given under section 1490.

OF THE POOR.

(Chapter LXIII, R. S. 1878.)

OF THE RELIEF AND SUPPORT OF THE POOR.

Towns to support poor.

9 Wis. 238.
38 Wis. 499.
47 Wis. 31.
54 Wis. 648.
59 Wis. 604.

Legal settlements, how acquired.

SECTION 1499. Every town shall relieve and support all poor and indigent persons lawfully settled therein, whenever they shall stand in need thereof, except as hereinafter provided (a).

SECTION 1500. Legal settlements may be acquired in any town, so as to oblige such town to relieve and support the persons requiring the same, in case they are poor and stand in need of relief, as follows:

1. A married woman shall always follow and have the settlement of her husband, if he have any within the state; otherwise her own at the time of marriage, and if she then had any settlement, it shall not be lost or suspended by the marriage; and in case the wife shall be removed to the place of her settlement, and the husband shall want relief, he shall receive it in the place where his wife shall have her settlement.

2. Legitimate children shall follow and have the settlement of their father, if he have any within the state, until they gain a settlement of their own; but if the father have no settlement, they shall in like manner follow and have the settlement of their mother, if she have any.

3. Illegitimate children shall follow and have the settlement of their mother at the time of their birth, if she then have any within the state; but neither legitimate nor illegitimate children shall gain a settlement by birth in the place where they were born, unless their parent or parents had a settlement therein at the time.

(a) The board of supervisors of a town may make a valid contract for the support of its poor. [*Meyer v. The Town of Prairie du Chien*, 9 Wis. 231.]

NOTE.—Chapter 425, Laws 1885, forbids the contract system in poor-houses and asylums.

4. Every person of full age, who shall have resided in any town in this state one whole year, shall thereby gain a settlement in such town; but no residence of a person in any town, while supported therein as a pauper, shall operate to give such person a settlement in such town. <sup>54 Wis. 648.
60 Wis. 58.</sup>

5. Every minor whose parent, and every married woman whose husband has no settlement in this state, who shall have resided one whole year in any town in this state, shall thereby gain a settlement in such town.

6. Every minor who shall be bound as an apprentice to any person, shall, immediately upon such binding, if done in good faith, thereby gain a settlement where his or her master or mistress has a settlement.

7. Every settlement, when once legally acquired, shall continue until it be lost or defeated by acquiring a new one in this state, or by voluntary and uninterrupted absence from the town in which such legal settlement shall have been gained, for one whole year or upward; and upon acquiring a new settlement, or upon the happening of such voluntary and uninterrupted absence, all former settlements shall be defeated and lost (a). ^{51 Wis. 185.}

8. Whenever any territory shall be organized into or attached to any town or city, every person having a legal settlement in such territory, and who actually dwells or has his home, or if absent, had his last dwelling place or home therein, shall thereafter have a legal settlement in such new town or city, or in the town or city to which such territory is so attached, as the case may be. The organization into, or attachment to any town or city of any territory shall not prevent any person from acquiring a legal settlement therein, within the time and by the means by which he would have gained it there if no such new town or city had been organized or such territory had not been attached (b). ^{60 Wis. 54.}

(a) The year referred to does not include an absence during which the town in which the person had a legal settlement supported the absentee as a pauper in some other town in the state. [*Town of Scott v. Town of Clayton*, 51 Wis., 185.]

(b) Where a pauper has a legal settlement in a town, and such town is divided into two parts, from each of which a new town is organized, the new town in which the pauper actually dwells at the time of such division will thereafter be liable for his maintenance and support, while he remains such pauper. A pauper who is boarded or supported in a particular house "actually dwells" therein within the meaning of subdivision 8, section 1500. R. S. [*Town of Hay River v. Town of Sherman*, 60 Wis. 54.]

Application of
section.

The provisions of this section shall apply to cases of settlements begun to be acquired, lost or defeated, before these statutes shall go into effect as well as after.

Town super-
visors to have
charge of poor.

54 Wis. 648.

SECTION 1501. The supervisors in each town shall have the oversight and care of all poor persons in their town, so long as they remain a town charge; and they shall see that they are properly relieved and properly taken care of in the manner required in this chapter.

What relatives
to support poor
persons.

SECTION 1502. (As amended by ch. 265, L. 1881.) The father, mother and children, being of sufficient ability, of any poor person, who is blind, old, lame, impotent or decrepit, so as to be unable to maintain himself, shall, at their own charge, relieve and maintain such poor person in such manner as shall be approved by the supervisors of the town where such person may be, and upon failure of any such relation so to do, the supervisors shall apply to the county judge of the county wherein such poor person may be, for an order to compel such relief, of which application (1) at least fourteen days' notice in writing (2) shall be

(1) *Form of Application to Compel a Person to Support a Poor Relative.*

To ———, county judge of ——— county:

The undersigned, supervisors of the town of ———, in said county, respectfully represent that E. F., in said town, is a poor person, who is blind, (or old, lame, impotent, decrepit), so as to be unable to maintain himself; that G. F., of said county, is the father of the said E. F., and has, although of sufficient ability (or A. F. and C. F. are the children, and D. F. is the mother of the said E. F., and although of sufficient ability have), failed at his (or their) own charge to relieve and maintain the said E. F. in such manner as to be approved by the supervisors of the town:

The undersigned, therefore, hereby apply for an order to compel the said G. F. (or, the said children, or mother, or any two or more of said relatives, as the case may be), to relieve and maintain the said E. F. in the manner to be in such order specified.

Dated this ——— day of ———, 18—.

—————, }
—————, } Supervisors.
—————, }

(2) *Form of Notice of Application to County Judge under Section 1502.*

To G. F., of the town of ———, in the county of ———:

Please to take notice, that on ——— day of ———, 18—, at ——— o'clock in the ——— noon, the undersigned, supervisors of the town of ———, will apply to the county judge of

given by serving the same upon the person to whom it is directed, in the same manner provided in section two thousand six hundred and thirty-six of the revised statutes, for the service of summons in courts of record. Such notice may be so served anywhere within this state.

SECTION 1503. The county judge shall require maintenance or relief from such relatives in the following order: The father shall first be required to maintain such poor person, if of sufficient ability; and if there be none such, then the children, if any be of sufficient ability; if there be none such, then the mother, if of sufficient ability. If satisfied that any such relative is unable wholly to maintain such poor person, but is able to contribute to his support, the judge may, in his discretion, direct two or more such relatives to maintain him, and shall prescribe the proportion each shall contribute for that purpose; if satisfied that such relatives are unable together wholly to maintain such poor person, but are able to contribute something therefor, the judge shall direct a sum to be paid weekly by each such relative in proportion to his ability.

Order of support by relatives, etc.

51 Wis. 99.

SECTION 1504. At the time and place fixed in such notice, such judge shall proceed in a summary way to hear the proofs and allegations of the parties, and shall make an order that such of said relatives as appear to be of sufficient ability shall maintain or contribute to the support of such poor person, and shall therein specify the sum which will be sufficient for the support of such poor person, to be paid weekly, or require such relative to pay weekly, for that purpose, a specified sum to such supervisors, and specify the time during which such relatives shall maintain such poor person, or during which any of said sums shall be paid, or it may be indefinite, or until the further order of the judge; and the said judge may vary such order whenever the circumstances

Order of the court, what to contain.

said county, at his office in the — of —, in said county, for an order to compel the relief set forth in the application, a copy whereof is hereunto annexed, which said application will, at the time and place above mentioned, be presented to the said county judge.

Dated this — day of —, 18—.

_____,
_____,
_____, } *Supervisors.*

Costs of and
obedience to,
how enforced.

shall require it, on the application of any relative affected thereby, or of any supervisor, upon fourteen days' notice, given in the manner aforesaid. The costs and expenses of the original application shall be ascertained by the judge, and required by such order to be paid by such relative. Full obedience to every such order may be enforced by proceedings as for a contempt.

Suits for neg-
lect to comply
with such or-
ders.

SECTION 1505. If any relative who shall have been required by such order to relieve or maintain any poor person shall neglect to do so, in such manner as shall be approved by the supervisors of the town, or shall neglect to pay to the said supervisors weekly, the sum prescribed by the judge for his support, the said supervisors may recover in an action in the name of the town against such relatives, the sum so prescribed for every week the said order shall have been disobeyed, up to the time of judgment, with costs of suit, for the use of the poor.

Abseonding
father, mother
or husband,
how proceeded
against.

SECTION 1506. Whenever the father, or mother being a widow, or living separate from her husband, shall abscond or be about to abscond from his or her children, or a husband from his wife, or when such father, mother or husband shall be about permanently to remove from the town in which he or she may reside, leaving a wife or children, or both, chargeable, or likely to become chargeable upon the public for support, or who shall neglect or refuse to support or provide for such wife or children, the mayor of the city, president of the village, or supervisors of the town where such wife or children may be, may apply to the county judge or any justice of the peace of any county in which any estate, real or personal, of the said father, mother or husband may be situated, for a warrant to seize the same (a).

When warrant
issued, and
goods, lands,
etc., seized.

SECTION 1507. Upon due proof of the facts aforesaid, such judge or justice shall issue his warrant, authorizing such mayor, president or supervisors to take and seize the goods, chattels, effects, things in action, and the lands and tenements of such person, and by virtue of such war-

(a) NOTE. — Chapter 119, of the Laws of 1882, provides punishment for parents for criminal neglect of their children.

Chapter 422, of the Laws of 1885, provides punishment of a father for abandonment of his child or children and of a husband for the desertion of his wife.

These laws are omitted in this revision for the reason that they belong to the general criminal statutes.

rant they may seize and take any such property wherever found in the same county; and they shall be vested with all the rights and title to any such property and things in action, which such person had at the time of his departure; and they shall immediately make an inventory thereof and return the same, with said warrant, and their proceedings thereon, to the county court. All sales and transfers of any real or personal property, or things in action, left in the county from which any such person shall have absconded, made by him after the issuing of such warrant, whether in payment of an antecedent debt or otherwise, shall be absolutely void.

Sales made
after warrant
issued, void.

SECTION 1508. Upon such return, the county court may inquire into the facts and circumstances, and may confirm such seizure or discharge the same, and if the same be confirmed shall from time to time direct what part of the personal property shall be sold, and how much of the proceeds of such sales and the rents and profits of the real estate shall be applied toward the maintenance of the wife or children of such person. All such sales shall be at public auction.

County court
may confirm
seizure and or-
der sale.

SECTION 1509. The mayor, president, or supervisors, shall receive the proceeds of all property so sold, and the rents and profits of the real estate of such person, and apply the same to the maintenance and support of the wife or children of such person; and they shall account to the said county judge for the moneys so received and for the application thereof from time to time; and the judge may compel them to render such account at any time.

Proceeds, by
whom received
and accounted
for.

SECTION 1510. If the person whose property shall have been so seized shall return and support the wife or children so abandoned, or give security to the mayor, president or supervisors, to be approved by them, that such wife or children shall not become, or thereafter be chargeable, to such city, village or town, the county judge shall discharge such warrant, and the property seized by virtue thereof and remaining unappropriated, or the unappropriated proceeds thereof, after deducting the expenses of such proceedings, shall be restored to such party.

When prop-
erty restored.

SECTION 1511. When any minor shall become or be likely to become chargeable to any town,

When supervisors may blind out minor, etc.

19 Wis. 274.

either because of being an orphan, or because the parents or other relations are unable or refuse to support such minor, the supervisors of such town shall bind such minor as an apprentice to some respectable householder of the county, by written indenture (1), which shall bind such minor to serve as an apprentice, and shall be executed in like manner, and shall be of the same tenor and effect,

(1) *Form of Indenture of Apprenticeship.*

Whereas, C. D., a minor, now aged ——— years, has become (or is about to become) chargeable to the town of ———, because of being an orphan (or because the parents or other relations of said minor are unable or refuse to support him):

Now, therefore, this indenture, made this ——— day of ———, 18—, witnesseth: That E. F. G. H. and L. M., supervisors of said town of ———, in the county of ——— and state of Wisconsin, do hereby put and bind the said C. D. as apprentice to E. E., of the town of ———, to learn the trade of a blacksmith (or other trade, profession or employment, according to the fact), and as an apprentice, to serve from this date until the said C. D. shall have attained the age of twenty-one years, which will be on the ——— day of ———, 18— (or for the term of ——— years from this date), during all which time the said apprentice shall serve the said master faithfully, honestly and industriously, his secrets keep, and lawful commands everywhere readily obey; at all times protect and preserve the goods and property of the said master, and not suffer or allow any to be injured or wasted. He shall not buy, sell or traffic with his own goods or the goods of others, nor be absent from the said master's service, day or night, without leave, but in all things behave as a faithful apprentice ought to do, during the said term. And the said E. E. shall clothe and provide for the said apprentice, in sickness and in health, and supply him with suitable food and clothing, and shall use and employ the utmost of his endeavor to teach or cause the said apprentice to be taught or instructed in the art, trade or mystery of (stating trade, etc., as above), and also cause the said apprentice, within such term, to be instructed to read and write, and in the general rules of arithmetic, and at the end of the said term to give the said apprentice a new Bible.

And the said E. E. further agrees to pay the said C. D. the following sums of money, viz.: For the first year of his service, ——— dollars; for the second year of his service, ——— dollars, and for every subsequent year, until the expiration of his term of service, ——— dollars; which said payments are to be made on the ——— day of ———, in each year.

And for the true performance of all and singular the covenants and agreements aforesaid on their respective parts to be performed, the said parties do bind themselves, each unto the other, firmly by these presents.

In witness whereof, the parties aforesaid have set hereunto and unto a counterpart hereof of the same tenor and date, their hands and seals the date and year first above written.

In presence of:

———,
———.

———, [SEAL.]
———, [SEAL.]
———, [SEAL.]
———, [SEAL.]

} Supervisors of
the town of
———.

as indentures executed pursuant to chapter one hundred and ten; and every minor so bound, and the supervisors binding him, and his master, shall be subject to all the provisions of said chapter (a).

SECTION 1512. When any person not a resident, nor having a legal settlement therein, shall be taken sick, lame, or otherwise disabled, in any town, and shall not have money or property to pay his board, attendance and medical aid, the supervisors shall provide such assistance to such poor person as they may deem just and necessary, and if he shall die, they shall give him a decent burial. They shall make such allowance for such board, nursing, medical aid and burial expenses as they shall deem just, and order the same to be paid out of the town treasury. The expenses so incurred by such town shall be a charge against the county; the account of the town therefor shall be audited by the county board as other claims against the county, and paid out of the county treasury; and the amount so paid by any county may be recovered by it in an action against the town in which such person so relieved has a legal settlement (b).

Supervisors to relieve needy strangers and charge to county.

54 Wis. 645.

55 Wis. 526.

59 Wis. 151.

18 Wis. 624.

38 Wis. 499.

SECTION 1513. If any poor person shall become a charge for his support to any town, having no legal settlement therein, the town in which he may have a legal settlement shall be liable for his support. The supervisors of the town furnishing relief or support to any such person may give notice to the supervisors, or any one of them, of the town liable for his support, informing such supervisors thereof, and requiring them forthwith to take charge of such poor person (1).

Town of pauper's residence liable to town supporting him.

Notice of liability to be given.

22 Wis. 459.

40 Wis. 682.

51 Wis. 192.

54 Wis. 649.

55 Wis. 526.

(a) When supervisors to give consent to apprenticeship of minors generally. [Section 2378 R. 8.]

The indenture is void unless it specifies some "profession, trade or employment" in which the apprentice is to be instructed. [19 Wis. 274.]

(b) The town in which a pauper happens to be destitute, in absolute want and without any means of support, is primarily liable for his support, when notice is properly brought home to the supervisors. This liability is not defeated by a failure of the supervisors to make a contract for such support, nor by the fact that the town wherein such pauper has a legal settlement is ultimately liable therefor. [McCafferty v. Town of Shields, 54 Wis. 649; Town of Dacotah v. Town of Winneconne, 55 Wis. 522; Davis v. Town of Scott, 19 Wis. 634.]

(1) Form of Notice under Section 1513.

COUNTY OF _____, } ss.
Town of _____, }

To the supervisors of the town of _____, in said county:

You are hereby notified that M. N., a poor person, who has

Duties of supervisors so notified.

Town liable for neglect to remove such person.

51 Wis. 192.
55 Wis. 526.

Claim, when barred.

Penalty for bringing paupers into this state.

SECTION 1514. The supervisors so notified shall, within thirty days thereafter, remove such poor person to their own town, and pay the expenses incurred in giving such notice, and in maintaining him from the time of his becoming a charge to the town in which he is maintained; and if said supervisors shall omit to remove him, and pay such expenses, within the time aforesaid, their town shall be liable therefor, and for all the expenses of maintaining such poor person, so long as he shall remain a public charge; and the town, where such person may be, may, from time to time, recover the same with costs; but if the supervisors receiving such notice shall, within said thirty days, deny, in writing, the allegations contained therein, and serve such denial (1) upon one or more of the supervisors giving the same, an action for such expenses and maintenance shall be commenced within three months after the service of such denial, or be forever barred, and no action shall be thereafter brought to recover for the maintenance of such poor person.

SECTION 1515. Any person who shall bring or remove, or cause to be brought or removed, any poor person from any place without this state into any town within it, with intent to make such town chargeable with his support, shall forfeit fifty dollars; and the justice or court before whom

legal settlement in said town of —, has become a charge for his support to the town of —, in — county, in which he has no legal settlement.

You are therefore required, by the supervisors of said town of —, to forthwith take charge of said M. N.

Dated this — day of —, 18—.

_____, } Supervisors of
_____, } the Town of
_____, }

(1) *Form of Denial of Allegation of Notice.*

COUNTY OF —, }
Town of —, } ss.

To the supervisors of the town of —, in said county:

The undersigned, supervisors of the town of —, in — county, hereby deny the allegations contained in the notice to us given by you, on the — day of —, 18—, touching the support and legal settlement of M. N. as a poor person.

Dated this — day of —, 18—.

_____, } Supervisors of
_____, } the Town of
_____, }

such person shall be convicted for a violation of the provisions of this section shall, by its judgment, require of such person satisfactory surety that he will, within a reasonable time to be fixed, transport such poor person out of the state, or indemnify such town for all charges and expenses which have been or may be incurred in his support; and in case of neglect or refusal so to do, commit such person to the county jail for a term not exceeding three months.

SECTION 1516. The town boards of the several towns shall present, at each annual town meeting therein, a report showing the amount of money expended by them for the relief and support of poor persons in such town during the then preceding year, the name of each poor person or family relieved, and the amount appropriated for the support of each, together with all such other items of expenditures incurred, agreeably to the provisions of this chapter; they shall also in said report present an estimate of such sum as in their opinion will be required for the support of the poor in such town for the then ensuing year.

Supervisors to report their expenditures on account of poor.

THE SUPPORT OF THE POOR BY COUNTIES.

SECTION 1517. The county board shall have the care of all poor persons in their county, who have no legal settlement in any town in this state; and they shall see that they are properly relieved and taken care of at the expense of the county. They may make such rules and regulations as they may deem proper, not inconsistent with law, in relation to the support and maintenance of such poor persons; and they may also contract with the town board of any town in their county to keep and maintain, at the place where the poor supported by the county are kept, such poor persons as may be a charge upon such town at a stipulated price, the amount of which shall be levied and collected in such town in the same manner that county taxes are levied and collected therein.

County board to have care of poor.

88 Wis. 499.
54 Wis. 648.

SECTION 1518. The county board of any county wherein the distinction between town and county poor shall exist may purchase or hire suitable lands and buildings, at and upon which the poor supported by the county may be kept and maintained; and the county board may appoint an

County board may hire or purchase lands upon which to keep the county poor and appoint an agent.

53 Wis. 650.

agent to take charge of such poor and of such lands and buildings, and perform such other duties relating to the care and maintenance of such poor, as may be imposed upon him by said board.

Board may abolish distinction between county and town poor.

82 Wis. 357.

88 Wis. 499.

47 Wis. 81.

SECTION 1519. The county board of any county may, at any annual meeting or special meeting called for that purpose, by resolution adopted by the vote of a majority of all the supervisors entitled to a seat in such board, abolish all distinction between county poor and town poor in such county, and have the expense of maintaining all the poor therein a county charge; and upon filing such resolution duly certified by the county clerk, with the register of deeds, the poor in such county shall be maintained at the expense thereof, and the county board may levy and collect such expense in the same manner as other county charges.

County superintendent of poor, when elected, terms of office, etc.

SECTION 1520. Whenever the distinction between county poor and town poor shall have been so abolished in any county, the county board may elect by ballot three county superintendents of the poor, who shall hold their offices for such term, not less than one nor more than three years, as said board may determine, subject to removal by said board, at any meeting thereof, and all vacancies shall be filled by the county board in like manner; but when a vacancy happens before the expiration of the term, it shall be filled for the residue of the term only; or any such county board may provide for the support and maintenance of such poor without the election of superintendents, in such manner as they shall direct.

Superintendents to execute bond.

SECTION 1521. Every county superintendent of the poor shall within ten days after notice of his election and before entering upon the duties of his office, execute to the county his bond in such sum as shall be required by resolution of the county board, with two or more sureties, to be approved by said board, or the chairman thereof when said board is not in session, and file the same in the office of the county clerk. Such bond shall be conditioned in substance that he will faithfully and properly perform all the duties of the office of county superintendent of the poor, and will pay over, according to law, all moneys that shall come into his hands as such superin-

tendent, and will render a just and true account thereof, whenever required by the county board, or by any provisions of law, and will deliver over to his successor, or any other person authorized by law to receive the same, all moneys, books, papers and other things appertaining or belonging to his said office.

SECTION 1522. The said superintendents shall have the general superintendence of the poor in their county; and they may make such rules and regulations for their support and maintenance, not inconsistent with law, as shall be approved by the county board; but they shall at all times be subject to the direction and control of the county board, in all things pertaining to the care and support of the poor.

Duty of superintendents.

SECTION 1523. The county board of any county, which shall have abolished the distinction between county poor and town poor, may, at any annual meeting, or special meeting called for that purpose, levy a tax not exceeding two mills on the dollar in any year, for the purpose of purchasing or hiring a suitable farm and dwelling, and the necessary stock and implements for the management of the same, to which farm the poor in such county may be removed.

Board may tax to purchase and stock county farm.

58 Wis. 406.

SECTION 1524. When any county shall have abolished the distinction between county poor and town poor, the same powers conferred and duties imposed in this chapter on town supervisors, as officers of the poor, shall be exercised by the county superintendents of the poor in such county, if there be any, and if there be none, then by such officers or agents as shall be appointed by said county board therefor; otherwise by the county board of such county. Every such superintendent shall have power to administer oaths to any person concerning any matter submitted to such superintendents, or connected with their powers and duties.

Power of superintendent.

38 Wis. 499.

SECTION 1525. The county board of any county, wherein the distinction between county poor and town poor shall have been abolished, may, at their annual meeting, or at a special meeting called for that purpose, by an order in writing, signed by a majority of all the members of such board, and filed and recorded by the county clerk, adopt the town system of supporting the poor in such county;

County board may return to the town system.

and thereafter the poor of such county shall be supported in the same manner as if such distinction had never been abolished, and the office of the county superintendents of poor shall become vacant at such time as shall be determined by said county board, and said board may make such disposition of the poor-houses and other property connected therewith as they may deem proper.

Who ineligible
as superintend-
ent.

SECTION 1526. No member of the county board shall be eligible to or hold the office of superintendent of the poor of his county during the term for which he shall have been elected supervisor, except in any county where it is otherwise specially provided by law; and no member of any county board, or county superintendent of poor shall, except in an official capacity, enter into any agreement to sell, furnish or supply provisions, clothing, or anything whatsoever for the use of the county poor in his county, nor have an interest, direct or remote, in any such agreement; and all agreements made in contravention of this section shall be void.

Who not to be
interested in
contracts with
county.

Who not to be
sent to poor-
house.

SECTION 1527. No child over five and under sixteen years of age shall be sent as a poor person to any county poor-house, for support and care, unless such child be an unteachable idiot, an epileptic, or a paralytic, or otherwise diseased or deformed, so as to render it unfit for family care; but the county superintendents, or other officers having the care of the poor, shall provide for the care and support of such poor children, in families, orphan asylums, or other appropriate institutions. The county board, or the agents whom they may appoint, may bind out all minors who are supported at the expense of the county, in the same manner and with like effect as town boards are authorized to do by section fifteen hundred and eleven.

County may
bind out minor
paupers.

Confinement of
poor insane,
how effected.

SECTION 1528. Whenever it shall appear to the satisfaction of any county judge, by a petition of a majority of the supervisors of any town, of the common council of any city, or of the board of trustees of any village, containing a statement of all the facts in the case, that the public safety requires the close custody of any poor insane person, having a legal settlement in such town, city or village, such judge shall make and deliver to the sheriff an order in writing, requiring him

forthwith to take and confine such insane person in some proper place, to be therein specified. Such insane person, when so confined, shall be subject to the directions of the said judge, and shall receive such care, attention and treatment as such judge shall deem proper and necessary. All expenses incurred in confining, taking care of, and maintaining such person, when properly certified to by the county judge, shall be audited by the county board and paid out of the county treasury.

To be under direction of county judge.

SECTION 1529. Nothing in this chapter shall be construed to repeal any law making special provisions for the management and support of the poor in any county.

This chapter not to repeal special provisions.

OF BASTARDS.

(Chapter LXIV, R. S. 1878)

Proceedings on
complaint
against father,
etc.

7 Wis. 672.
12 Wis. 561.
17 Wis. 596.
19 Wis. 307.
27 Wis. 385.
31 Wis. 600.
47 Wis. 111.
48 Wis. 485.
56 Wis. 570.

SECTION 1530. On complaint being made to any justice of the peace, by any female who shall be delivered of a bastard child, or who shall be pregnant with a child, which, if born alive, may be a bastard, accusing any person of being the father of such child, the justice shall take such complaint in writing, under the oath of such female, and shall thereupon issue his warrant against the person accused, directed to the sheriff or any constable of his county, commanding him forthwith to bring such accused person before the justice to answer such complaint.

* * * * *

Who may prosecute if mother neglects.

SECTION 1539. When the mother of a bastard child commences any such proceeding, and fails to prosecute the same, the supervisors of the proper town, or proper officers of the county in which the distinction between town and county poor has been abolished, or any person interested in the support of such bastard, may prosecute the proceedings commenced by the mother to final judgment.

Inquiry into case of bastardy, who may institute.

SECTION 1540. If any female shall be delivered of a bastard child, which shall be, or shall be likely to become a public charge; or shall be pregnant of a child likely to be born a bastard and to become a public charge, any member of the town board where such female shall reside, or in case she shall reside in a county which has abolished the distinction between county poor and town poor, any member of the county board or any superintendent of the county poor thereof may, if they deem proper, apply (1) to some justice

(1) *Application of a Member of the Town Board to a Justice of the Peace Relative to a Bastard.*

STATE OF WISCONSIN, } ss.
County of _____, }

To _____, Esq., justice of the peace:

A. B., a resident of the town of _____, in said county of _____,

of the peace of the same county, who shall thereupon examine such female on oath, respecting the father of such child, the time when and place where she was begotten with such child, and as to such other circumstances as he may deem necessary; and such justice shall thereupon issue his warrant to apprehend the reputed father, and the same proceedings shall be had thereon, and with the like effect, as are hereinbefore provided in cases of complaint made by such female.

SECTION 1541. Any warrant issued under this chapter may be executed in any part of this state; and in all cases said town and county supervisors, superintendents of county poor, and the accused may compel the said female to attend and testify, the same as witnesses in other cases.

Warrant how executed, female compelled to attend, etc.

SECTION 1542. The proper town or county supervisors, or county superintendents of the poor, respectively, shall have power to make such compromise and arrangement with the reputed father of any bastard child in such town or county, relative to the support of such child, as they shall deem equitable and just; and thereupon may discharge such putative father from all liability for the support of such bastard.

Compromise with father for support of child.

56 Wis. 570.

having been delivered of a bastard child which is (or is likely to become) a public charge to said town (or, A. B. being pregnant of a child likely to be born a bastard and to become a public charge to said town) the undersigned, a member of the town board of said town pursuant to section 1540 of the revised statutes of this state, hereby applies to you to examine the said A. B. on oath respecting the father of such child, the time when and place where she was begotten with such child, and as to such other circumstances as you may deem necessary in the premises.

Dated this — day of —, 18—.

(Signature.)

Member town board of town of —.

OF EXCISE.

(Chapter LXVI, R. S. 1878.)

OF EXCISE, AND THE SALE OF INTOXICATING LIQUORS.

Town boards,
village boards
and common
councils may
grant license.

1 Wis. 436.
17 Wis. 463.
31 Wis. 262.
33 Wis. 357.
33 Wis. 107.
33 Wis. 154.
33 Wis. 668.
37 Wis. 293.
38 Wis. 549.

SECTION 1548. (As amended by sec. 10, ch. 322, L. 1882, and sec. 1, ch. 296, L. 1885.) The town boards, village boards and common council of the respective towns, villages and cities, may grant (1) license under the conditions and restrictions in this chapter contained, to such persons as they deem proper to keep groceries, saloons or other places within their respective towns, villages or cities, for the sale in quantities of less than one gallon of strong, spirituous, malt, ardent or intoxicating liquors, to be drank on the premises; and in like manner may grant licenses for the sale, in

(1) *Form of Order of Town Board Granting Licenses and Fixing Amount to be Paid Therefor.*

COUNTY OF ———, }
Town of ———. } ss.

Whereas, A. B., of said town, has applied to the undersigned, town board of the said town of ———, for license to keep a saloon (*grocery or other place*) on the following described premises within said town, viz.: (*describe premises*), for the sale, in quantities less than one gallon, of strong, spirituous, malt, ardent or intoxicating liquors, to be drank on the premises.

And whereas, C. D., of said town of ———, has also applied to us for license to keep a grocery (*saloon or other place*) on the following described premises in said town, viz.: (*describe premises*), for the sale, in any quantity of strong, spirituous, etc, liquors, not to be drank on the premises:

It is therefore ordered, that to each of said applicants the license applied for by him be granted, upon his duly executing and filing the bond required by law, and upon his paying such license, as follows: the said A. B. ——— dollars, and the said C. D. ——— dollars.

And that the town clerk attest and deliver such license to each applicant therefor, upon his producing to said clerk a receipt, showing the payment to the town treasurer of the sum hereby required of him, and upon his filing with said clerk the bond aforesaid.

Given under our hands this ——— day of ———, 18—.

—————, }
—————, } *Town Board.*
—————, }

any quantity, of such liquors, not to be drank on the premises (a), and the sum to be paid for such license for the sale of such liquors to be drank on the premises, shall (subject to the right to increase the same, as in this chapter provided) be, in towns having within their boundaries, no city or village incorporated or unincorporated with a population of five hundred or more, one hundred dollars, and in all cities and villages, and in towns not herein otherwise provided for, the sum to be paid for such license shall be two hundred dollars; and the sum to be paid for such license for the sale of such liquors not to be drank on the premises, except for registered pharmacists, as in this chapter provided, shall be two hundred dollars. The application for any such license shall be in writing, and shall state the kind of license applied for, and a designation of the premises where such liquors shall be sold. All such licenses shall remain in force until the first Tuesday in May next after the granting thereof, unless sooner revoked by the board or common council granting the same. Such license (1) shall

Cost of.

55 Wis.	178.
56 Wis.	582.
58 Wis.	53.
58 Wis.	33.

(a) An administrator is not required to obtain a license for the sale of spirituous liquors, to enable him to dispose of liquors belonging to his intestate, in the settlement of the estate; nor is a sheriff, before he can sell such property on execution. [*Williams v Troop, adm'r, et als.* 17 Wis. 464.]

License issued without the giving of the bond required by the statute is void. [*State ex rel. Henshall v. Ludington et als.* 33 Wis. 107.]

And a license granted without such bond being given is no protection to the licensee. [*State v. Fischer.* 33 Wis. 154.]

The provisions of the excise law do not apply to sales by manufacturers of liquors made by themselves, and put up and disposed of in quantities to dealers, according to the usual course of manufacture, and of the trade connected with it. [*Scanlan v. Childs.* 33 Wis. 663.]

The statute does not permit a person to sell the liquors for which license is required, even for medicinal purposes, without first obtaining a license to sell pursuant to law. [*State v. Downer.* 21 Wis. 277.]

It seems that the statute vests in the town boards the discretionary power to grant or refuse licenses as they may deem proper. [*Id.* 279.]

(1) Form of License Attested by Town Clerk.

COUNTY OF ———, }
Town of ———. } ss.

A. B. of said town of ———, having produced to the undersigned, town clerk thereof, a receipt showing the payment of ——— dollars to the town treasurer of said town, and having filed with me the bond required by law, duly approved by the town board thereof, in conformity with an order of said board, made on the ——— day of ———, 18—:

This is to certify that, in pursuance of said order, license is granted to said A. B.* to keep a saloon (*grocery or other place*) on the following described premises (*describe*) within said town, for the sale, in quantities less than one gallon, of strong,

be attested by the town, city or village clerk, and shall not be delivered until the applicant shall produce and file with the clerk a receipt, showing the payment of the sum required therefor to the proper town, village or city treasurer, and until the filing with such clerk of the bond provided for in section 1549, of the revised statutes. It is hereby made the duty of all town boards, village boards and common councils to meet and be in session on the third Tuesday in April of each year, and from day to day thereafter, so long as it may be necessary, for the purpose of acting upon such applications as may be presented to them, conformable to the provisions of this chapter. The population of any city or village shall be ascertained by the last preceding enumeration by the state or general government (b).

Permits shall
be granted to
pharmacists.

SECTION 1548a. (Section 2, chapter 296, Laws 1885.) The town boards, village boards and common councils of the respective towns, villages and cities in this state, upon the written application of any registered pharmacist, shall grant to such registered pharmacist, a permit to sell strong, spirituous and ardent liquors in quantities less than one gallon, for medicinal, mechanical or scientific purposes only, and not to be drank on the premises. The sum to be paid for such permit shall be ten dollars; and such permit shall be granted and issued in the same manner and terminate at the same time as the license provided for in the preceding section, except that it shall not be necessary for any such registered pharmacist to furnish the bond required by section 1549, of the revised statutes. It shall be the duty of every pharmacist to whom a permit is issued, to keep a book in which he shall enter the date of every sale made by him

spirituous, malt, ardent or intoxicating liquors, to be drank on the premises

This license will remain in force until the first Tuesday in May, 18—, unless sooner revoked by proper authority.

In witness whereof, I have hereunto set my hand this — day of —, 18—. ———, Town Clerk

NOTE. — For license to wholesale, thus: * to keep a grocery (saloon or other place) on the following described premises within said town, viz: (describe same) for the sale, in any quantity, of strong, spirituous, malt, ardent or intoxicating liquors, not to be drank on the premises

(b) It is the duty of the town clerk to keep a record of all licenses granted by the town board for the sale of intoxicating liquors. [Hefsher v. State, 58 Wis. 54.]

of any such liquors, the name of the person to whom sold, and the kind and quantity of, and purpose for which such liquors are sold; and such book shall, at all times, be open to the inspection of the authorities granting such permit. It shall be the duty of every such pharmacist on the third Tuesday of April in each year to file with the clerk of the city, village or town in which his permit is granted, a verified copy of all the entries made by him in such book as he is required by this section to keep.

SECTION 1548b. (Section 3, chapter 296, Laws 1885.) The electors of the several cities, villages and towns in this state, may hold special elections (1) therein for the purpose of determining, as hereinafter provided, the amount to be paid in such city, village, or town for license to sell intoxicating liquors to be drank on the premises. And for that purpose it is hereby made the duty of the clerk of every city, village or town, on a request being made to him in writing, signed by at least twelve qualified voters of such city, village or town, and specifying the purpose for which such special election is to be held, to forthwith give notice of a special election (2) for that purpose in the

Special election to be held to determine the amount of license to be paid.

(1) *Petition for Special Election, under section 1548b.*

To ———, city (village or town) clerk of the city, village or town of ———:

You are hereby requested by the undersigned, twelve qualified electors of the city, (village or town) of ——— to call a special election, on the third Tuesday of September next, for the purpose of determining, as provided by law, the amount to be paid in the city (village or town) of ———, for license to sell intoxicating liquors to be drank on the premises.

Dated at ———, this ——— day of ———, A. D., 18—.

(Signatures.)

(2) *Notice of Special Election under Section 1548b.*

To the electors of the city (village or town) of ———:

The written request therefor of twelve (or more) electors of said city (village or town) having been duly filed with the undersigned city (village or town) clerk, of the city (village or town) of ———:

Notice is hereby given that a special election will be held in the city (village or town) of ———, on the third Tuesday of September next, being the ——— day of September, A. D. 18—, for the purpose of determining, as provided by law, the amount to be paid, in the city (village or town) of ——— for license to sell intoxicating liquors to be drank on the premises. The polls of the election will be opened at nine o'clock in the forenoon and closed at sundown.

Dated at ———, this ——— day of ———, A. D. 18—.

City (Village or Town Clerk).

manner provided for giving notice of general elections; provided, however, that such special election shall be held on the third Tuesday of September, and that no other question shall be submitted to the electors at the same time, and that no such special election shall be held oftener than once in three years. Such special election shall be held at the place and conducted by the officers and the result thereof canvassed in the same manner, in all respects, as near as practicable, as provided for general elections. At such special election in towns where the sum to be paid for license is hereinbefore fixed at one hundred dollars, the electors may increase such sum to either the sum of two hundred and fifty dollars, or the sum of four hundred dollars, as they may determine; and in all cities, villages and other towns wherein the sum to be paid for license is hereinbefore fixed at two hundred dollars, the electors may increase such sum to either the sum of three hundred and fifty dollars, or five hundred dollars as they may determine. The ballots to be voted at such special election shall be written or printed on plain white print paper and shall have written or printed thereon the words, "To be paid for license, \$—," and shall have written or printed thereon in words or figures, the sum to be paid for such license, according to the will of the person voting, that is, either of the several sums of one hundred dollars, two hundred and fifty dollars or four hundred dollars, in the class of towns first hereinbefore named, and either of the several sums of two hundred dollars, three hundred and fifty dollars or five hundred dollars in all cities, villages and other towns. The sum receiving the highest number of votes at such election, shall be held and considered the sum to be paid for such license to sell liquors within such city, village or town for the three years succeeding the first Tuesday in May next thereafter; provided, that if the highest amount to be voted for does not receive a plurality of the votes cast, then the votes cast for such highest amount shall be considered as having been cast for the next lower amount, and shall be so counted; and in case of a tie vote upon the lower and highest sums so to be voted for, if there shall be no votes cast for the third or medium sum to be voted for, such third or medium sum shall

be held and considered the sum to be paid for such license.

SECTION 1549. Every applicant for such license shall, before delivery thereof, file with such town, village or city clerk, a bond (1) to the state in the sum of five hundred dollars, with at least two sureties, to be approved by the authorities granting the license, who shall each justify (2) in double its amount over and above their debts and liabilities and exemptions, and be freeholders, and residents of the county, conditioned that the applicant, during the continuance of his license, will keep and maintain an orderly and well regulated house; that he will permit no gambling with cards, dice or any device or implement for that

Bond to be
filed.

17 Wis. 463.
33 Wis. 107.

Condition of
bond.

(1) *Form of Bond.*

Know all men by these presents, that we, A. B. as principal, and G. H. and E. F. as sureties, all of the town of —, within the county of —, are held and firmly bound unto the state of Wisconsin in the penal sum of five hundred dollars, for the payment of which sum well and truly to be made to said state, we bind ourselves, our heirs, executors and administrators, jointly, and severally, firmly by these presents.

Sealed with our seals and dated this — day of —, 18—.

Whereas, the above bounden A. B. has applied to the town board of —, in said county, for license to keep a saloon on the following described premises in said town, viz: (*describe*) for the sale, in quantities less than one gallon, of strong, etc., liquors to be drank on the premises (*or as the case may be*), and is desirous to procure the delivery of such license: Now the condition of the above obligation is such, that if the said A. B. during the continuance of his license will keep and maintain an orderly and well regulated house; will permit no gambling with cards, dice, or any device or implement for that purpose within his premises, or any outhouse, yard or shed appertaining thereto; will not sell or give away any intoxicating liquor to any minor, having good reason to believe him to be such, unless upon the written order of the parents or guardian of such minor; or to persons intoxicated or bordering upon intoxication, or to habitual drunkards; and will pay all damages that may be recovered by any person, pursuant to section fifteen hundred and sixty of the revised statutes of this state, and will observe and obey all orders of such supervisors made pursuant to law, then this obligation shall be void; other wise to remain in full force and virtue.

Signed, sealed and delivered in presence of.

— — —,
— — —.

— — —, [SEAL.]
— — —, [SEAL.]
— — —, [SEAL.]

(2) *Justification of Sureties.*

STATE OF WISCONSIN, }
County of —, } ss.

G. H. and E. F., the sureties named in the foregoing bond, being severally duly sworn, doth each for himself say, that he

29—T. L.

Breach of bond,
how prosecuted.

purpose, within his premises or any outhouse, yard or shed appertaining thereto; that he will not sell or give away any intoxicating liquor to any minor, having good reason to believe him to be such, unless upon the written order of the parents or guardian of such minor, or to persons intoxicated or bordering upon intoxication, or to habitual drunkards; and that he will pay all damages that may be recovered by any person pursuant to section fifteen hundred and sixty, and that he will observe and obey all orders of such supervisors, trustees or aldermen, or any of them, made pursuant to law. In case of the breach of the condition of any such bond, an action may be brought thereon in the name of the state of Wisconsin, and judgment shall be entered against the principals and sureties therein named for the full penalty thereof; and execution may issue thereupon by order of the court therefor, to satisfy any judgment that may have been recovered against the principal named in said bond, by reason of any breach in the conditions thereof, or for any penalties or forfeitures incurred under this chapter. If more than one judgment shall have been recovered, the court, in its discretion, may apply the proceeds of said bond towards the satisfaction of said several judgments, in whole or in part, in such manner as it may see fit.

Penalty for
selling without
license.

5 Wis. 339.
7 Wis. 670.
21 Wis. 204, 274.
22 Wis. 441.
24 Wis. 60.
29 Wis. 327.
31 Wis. 252.
37 Wis. 298.
52 Wis. 181.
52 Wis. 410.
58 Wis. 49.

SECTION 1550. (As amended by ch. 322, L. 1882 and ch. 296, L. 1885). If any person shall vend, sell, deal or traffic in, or for the purposes of evading any law of this state, give away any spirituous, malt, ardent or intoxicating liquors or drinks in any quantity whatever, without first having obtained a license or permit therefor, as required

is a freeholder and resident of said county of —, and worth the sum of one thousand dollars, over and above all his debts and liabilities and exemptions.

(Signatures.)

Subscribed and to sworn before me, this — day of —, 18—.

(Signature of officer.)

Form of Approval of Bond.

We hereby approve the within and foregoing bond, both as to the form thereof and the sufficiency of the sureties.

Dated this — day of —, 18—.

—, }
—, } *Town Board.*
—, }

by this chapter, he shall be deemed guilty of a misdemeanor and on conviction thereof, shall be punished therefor by a fine of not less than fifty dollars nor more than one hundred dollars, besides the costs of suit (a); or in lieu of such fine, by imprisonment in the county jail of the proper county, not to exceed six months, nor less than three months; and in case of punishment by fine as above provided, such person shall, unless the fine and costs be paid forthwith, be committed to the county jail of the proper county until such fine and costs are paid or until discharged by due course of law; and in case of a second or any subsequent conviction of the same person during any year the punishment shall be by both such fine and imprisonment.

SECTION 1550a. (Sec. 5 ch. 296, L. 1885). Any person who shall, for the purpose of inducing the sale of liquors by any registered pharmacist, holding a permit therefor, for any other use than medicinal, mechanical or scientific purposes, make any false statement or representation to such pharmacist, or any clerk or employe of such pharmacist, regarding the use for which such liquor is bought, and thereby induce such sale to be made in violation of law, or any registered pharmacist, holding a permit under this chapter, who shall neglect or refuse to comply with any of the requirements of this chapter, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished therefor by a fine of not less than ten dollars or more than forty dollars, besides the costs of suit; and in case of a second or any subsequent conviction of the same person, the punishment shall be by fine of not less than forty dollars or more than one hundred dollars, besides the costs of suit, or by imprisonment, in the county jail of the proper county, not less than thirty days or more than three months; and in case of punishment by fine, such person shall, unless the fine and costs be paid forthwith, be committed to the county jail of the proper county

Penalty for making false statements to pharmacists or clerk.

(a) There is no limitation to the quantity sold, or given away, for the purpose of evading the law. It is perfectly immaterial whether it is a gill, pint, quart or gallon or hog-head. If any assignable quantity be sold without license, the act is violated. The selling, etc., without license, or the giving away with unlawful intent of any quantity whatsoever, is prohibited. [See *Allen v. State*, 5, Wis. 320].

until such fine and costs are paid, or until discharged by due course of law.

Repealing section.

SECTION 1550b. (Section 6, ch. 296, L. 1885.) All acts and parts of acts in conflict with the provisions of this act are hereby repealed, except that nothing herein contained shall be construed to diminish the sum to be paid for license in any city or village in this state, as provided by the charter or ordinances thereof; provided, that the several town boards, village boards and common councils of the respective towns, villages and cities may fix a license to be paid for the year ending the first Tuesday of May, 1886, at any sum not exceeding the maximum, nor less than the minimum hereinbefore provided to be voted for in such towns, villages and cities, respectively.

Action of justice when complaint is made.

3 Wis. 795.
5 Wis. 839.
7 Wis. 610.
21 Wis. 274.
22 Wis. 441.
34 Wis. 60.
29 Wis. 327.
31 Wis. 252.
37 Wis. 293.

When justice to issue warrant.

56 Wis. 532.

District attorney to prosecute.

52 Wis. 153.

SECTION 1551. (As amended by sec. 2, ch. 322, L. 1882.) Upon complaint made to any justice of the peace by any person that he knows or has good reason to believe that an offense against any law of this state relating to excise or the sale of intoxicating liquors or any violation thereof has been committed, he shall examine the complainant on oath, and he shall reduce such complaint to writing, and cause the same to be subscribed by the person complaining (b). If it shall appear to such justice that there is reasonable cause to believe that such offense has been committed, he shall immediately issue his warrant reciting thereon the substance of such complaint, and requiring the officer to whom such warrant shall be directed forthwith to arrest the accused and bring him before such justice, to be dealt with according to law and in the same warrant may require the officer to summon such persons as shall be therein named to appear at the trial to give evidence.

SECTION 1552. The district attorney of the proper county shall, on notice given to him by the justice of the peace, before whom any such com-

(b) It is unnecessary to specify in the complaint the name of the person to whom the liquors were sold.

It is sufficient in such complaint to allege that the complainant "has good reason to believe" the facts charged, and that the defendant sold the liquor without having first obtained a license, and it is not necessary to allege that he received a compensation therefor. [See *State v. Bilby*, 21 Wis. 305, and *State v. Downer*, 21 Wis. 275.]

The person accused may be complained against under this section for the commission of any one of the several offenses stated by itself, or of all of them, each being separately stated, or the whole alleged conjunctively in the complaint. [*Clifford v. The State*, 29 Wis. 327.]

plaint shall be made, attend the trial before such justice, and conduct the same on behalf of the state.

SECTION 1553. (As amended by sec. 3, ch. 322, L. 1882.) Every supervisor, trustee, alderman, justice of the peace, police officer, marshal, deputy marshal or constable of any town, village or city, who shall know or be credibly informed that any offence has been committed against the provisions of any law of this state relating to excise or the sale of intoxicating liquors, shall make complaint against the person so offending within their respective towns, villages or cities to a proper justice of the peace therein, and for every neglect or refusal so to do every such officer shall forfeit twenty-five dollars, and the treasurer of such town, village or city, shall prosecute therefor.

Who required
to complain.

55 Wis. 180.
58 Wis. 48.

SECTION 1554. (As amended by ch. 174, L. 1881, and sec. 4, ch. 322, L. 1882, and sec. 1, ch. 438, L. 1885.) When any person shall, by excessive drinking of intoxicating liquors, misspend, waste or lessen his estate, so as to expose himself or family to want, or the town, city, village or county to which he belongs to liability for the support of himself or family, or so as thereby to injure his health, endanger the loss thereof, or to endanger the personal safety and comfort of his family, or any member thereof, the wife of such person, the supervisors of such town, the aldermen of such city or trustees of such village, the county superintendent of the poor of such county, or any of them may, in writing, signed by her, him or them (1), forbid all persons licensed in accordance

Spendthrifts;
who may forbid
dealers to furnish
them liquor.

55 Wis. 180.
55 Wis. 180.

(1) Notice Forbidding the Sale of Liquors to Drunkards or Spendthrifts.

(1) Whereas, A. B., of the (town, city or village of ———,) by excessive drinking of intoxicating liquors, misspends, wastes, or lessens his estate, so as to expose himself or family to want (1); or the town (city, village or county, as the case may be) to which he belongs, to liability for the support of himself or family (2); or so as thereby to injure his health, endanger the loss thereof (3); or to endanger the personal comfort of his family, or any member thereof (4);

Therefore, all persons are hereby forbidden to sell, or give away, to said A. B., any and all, spirituous or intoxicating liquors or drinks for the space of one year from this date.

(Signed)

Wife of said A. B.

Dated at ———, this ——— day of ———, A. D. 18—.

NOTE.—Officer signing must sign officially. Either of the clauses numbered 1, 2, 3, 4, may be used, and the one best describing A. B.'s condition should be used, or all may be.

with the laws of this state, to sell or give away to such person any ardent, spirituous or intoxicating liquors or drinks for the space of one year, and in like manner may forbid the selling, furnishing or giving away of any such liquors or drinks to such person by any licensed person in any other town, city or village to which such person may resort for the same.

Prohibition
may be renewed.

55 Wis. 180.

SECTION 1555. (As amended by sec. 5, ch. 322, L. 1882, and by sec. 2, ch. 438, L. 1885.) Such supervisors, aldermen, trustees, county superintendent of the poor, or any one of them, may in the same manner renew such prohibition from year to year as to all such persons as have not in their or his opinion reformed within the year; and if any person so prohibited shall, during such prohibition, sell or give away to any person to whom such sale shall have been so forbidden, any intoxicating liquors or drinks of any kind whatsoever, he shall forfeit for each offense the sum of fifty dollars, to be recovered upon his bond in an action to be prosecuted by the town, county, village or city treasurer.

Penalty for
violating order of
prohibition.

SECTION 1556. (As amended by ch. 312, L. 1880, and sec. 6, ch. 322, L. 1882, and sec. 3, ch. 438, L. 1885.) When the sale or giving away of any ardent, spirituous or intoxicating liquors or drinks to any person shall have been forbidden in the manner provided by law, every person who shall with knowledge thereof, sell, or give to, or for, or purchase or procure for, or in behalf of such prohibited person, any such liquors or drinks shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding fifty dollars and the costs of prosecution; and in default of immediate payment thereof, he shall be committed to the county jail not less than thirty days, unless sooner discharged by the payment of such fine and costs. The person to whom the selling to or purchasing or procuring for any such ardent, spirituous or intoxicating drinks has been prohibited, may be arrested on complaint of any supervisor, trustee, alderman or county superintendent of the poor, and brought before any justice of the peace of the county to testify as to where he obtained or procured intoxicating drinks, and if he shall refuse to testify he shall be committed to the county jail to be detained therein until he shall so testify or

be discharged by order of the court. In any such prosecution it shall not be necessary to allege in the complaint or information any facts tending to show that the person to whom such liquors or drinks were sold or given was a person to whom the sale of such liquors or drinks might lawfully or properly be forbidden; but it shall be sufficient to allege, generally, that such liquors or drinks were given or sold by the accused to such person, with knowledge that the sale or giving of such liquors or drinks to him had been forbidden in the manner provided by law.

SECTION 1557. (As amended by sec. 2, ch. 174, Laws 1881, and sec. 7, ch. 322, Laws 1882.) Any keeper of any saloon, shop or place of any name whatsoever, for the sale of any strong, spirituous or malt liquors to be drank on the premises, in any quantity less than one gallon who shall sell, vend or in any way deal or traffic in, for the purpose of evading any law of this state, relating to excise or the sale of intoxicating liquors, give away any spirituous, ardent or intoxicating, or malt liquors or drinks in any quantity whatsoever, to or with a minor or to any person intoxicated or bordering on a state of intoxication, and any person whatever who shall procure for, or sell or give away to any minor or intoxicated person any such liquors or drinks, shall be deemed guilty of a misdemeanor. No person shall sell or in any way deal or traffic in, or for the purpose of evading the law, give away, any spirituous, ardent or intoxicating or malt liquors or drinks in any quantity whatsoever, within one mile of either of the hospitals for the insane; and any person who shall so sell or give away any such liquors or drinks shall be deemed guilty of a misdemeanor.

Penalty for giving or selling liquor to minor or intoxicated person.

24 Wis. 80.

SECTION 1558. (As amended by sec. 2, ch. 174, L. 1881.) Upon complaint (1) made in writing

Proceedings for revocation of license.

(1) Form of Complaint.

To the town board of the town of ———:

The undersigned, E. D., resident of the town of ———, hereby makes complaint against F. L. of said town, who is duly licensed to keep a saloon (or other place) for the sale of strong, spirituous, malt, ardent or intoxicating liquors, on the following described premises (*describe same*) in said town, and alleges that the said F. L. keeps and maintains a disorderly, riotous, indecent and improper house (or that he permits

21 Wis. 204, 274.
 22 Wis. 441.
 24 Wis. 60.
 29 Wis. 327.
 31 Wis. 232.
 37 Wis. 298.
 55 Wis. 180.

under oath by the resident in, and filing with the clerk of, any town, village or city, that any such licensed person therein keeps or maintains a disorderly or riotous, indecent or improper house, or permits gambling in any form upon or within his premises or any appendage thereto, or that he has sold or given away any intoxicating liquor to any minor, without the written order of his parents or guardians, or to persons intoxicated or bordering upon intoxication, or to known habitual drunkards, or that he has not observed or obeyed any order of such supervisors, trustees, aldermen or any of them, made pursuant to law, the proper town board, village board or common council, shall issue a summons (2), to be signed by the

gambling upon or within his premises or otherwise as the case may be.) (Here state fully the facts relied upon to sustain the complaint.) E. D.

Dated this _____ day of _____, 18—.

COUNTY OF _____, } ss.
 Town of _____.

_____, being duly sworn, says that the foregoing complaint subscribed by him is true.

Sworn and subscribed before me this _____ day of _____, 18—. (Signature.)
 (Signature of officer.)

Security for Costs. Section 1559.

We hereby undertake to pay all costs of the proceedings against said _____, upon the above complaint, if the same shall, upon hearing, be found to be malicious and made without probable cause.

Dated this _____ day of _____, 18—. _____,

(2) Form of Summons.

COUNTY OF _____, } ss.
 Town of _____.

THE STATE OF WISCONSIN, to any constable of said town:

Whereas, complaint is duly made in writing, under oath, to the town board of said town by E. D., a resident thereof, that F. L., who keeps a (saloon) therein for the sale of ardent, intoxicating and malt liquors or drinks, under license granted pursuant to law, keeps and maintains a disorderly, riotous, indecent and improper house (or otherwise as in complaint.)

Now, therefore, you are hereby commanded to summon the said F. L., and he is hereby commanded to be and appear before said town board at (state place), on the _____ day of _____, 18—, at _____ o'clock in the _____ noon, to show cause why his license should not be revoked. Hereof, fail not at your peril.

Given under my hand, by order of said town board, this _____ day of _____, 18—. _____,

Town Clerk.

clerk, directed to any constable therein, commanding the persons so complained of to appear before them on a day and at a place, in such summons named, not less than three nor more than ten days from its date, and show cause why his license should not be revoked. Such summons shall be served at least three days before the time at which such person is commanded to appear, and may [be served] either personally or upon the person in charge of the place to which such license relates.

SECTION 1559. If such person shall not appear as required by the summons, the complaint shall be taken as true; and if the board shall deem its allegation sufficient, the license shall be revoked (1), and notice thereof shall be given to the person whose license is so revoked; but if such

On failure to answer, license forfeited.

(1) *Form of Order Revoking License.*

COUNTY OF _____, }
Town of _____, } ss.

Whereas, on the _____ day of _____, 18—, complaint was made to us in writing, under oath, by E. D., a resident of said town, that F. L., who keeps (*a saloon, or other place*), in said town, for the sale of, &c. (*as in license*), under license granted to him pursuant to law, by the town board of said town, on the _____ day of _____, 18—, keeps and maintains a disorderly, riotous, indecent and improper house (*or otherwise, as in complaint*).

And whereas, we did thereupon issue a summons, commanding the said F. L. to be and appear before us, the undersigned town board of said town, on (*state time*), at (*state place*); *and said F. L., having been duly served with said summons, and not having appeared as required thereby, we, the said town board, deeming the allegations of said complaint sufficient, do hereby order and determine, that the license granted to said F. L., as aforesaid, be and the same is hereby revoked.

Given under our hands this _____ day of _____, 18—.

_____, }
_____, } Town Board.
_____, }

* *If there is an appearance, say:* And said F. L., having then and there appeared and denied the complaint; now, after hearing the evidence produced by each party upon such issue, we find said complaint to * be true, and do hereby order and determine, that the license granted to said F. L., as aforesaid, be and the same is hereby revoked.

*Or, if such be the fact, proceed from * thus:* to be untrue, and do therefore order that the same be and is hereby dismissed. *If complaint found to be malicious and without probable cause, say:* to be untrue, and that the same was made by the said E. D., maliciously and without probable cause, and we do hereby order that the same be dismissed, and that the costs thereon, amounting to _____ dollars, shall be paid by the said E. D.

Hearing how
conducted.

Forfeited li-
cense, not re-
newable for
one year.

Any persons in-
jured may re-
quest officers to
prohibit any
liquor to be
sold to habitu-
al drunkards.

Punishment for
drunkenness.

person shall appear and deny the complaint, each party may produce witnesses and be heard by counsel. If upon such hearing, the board shall find the complaint to be true, the license shall be revoked, and if untrue, the proceeding shall be dismissed without costs to the accused, and if the complaint be found by the board to be malicious and without probable cause, the costs shall be paid by the complainant, and the board may require security therefor before issuing the summons, as aforesaid. When a license is revoked, it shall be so entered of record by the clerk, and no other license shall be granted to such person within twelve months of the date of its revocation, nor shall any part of the money, paid for any license so revoked, be refunded.

SECTION 1560 (as amended by sec. 8, ch. 322, Laws 1882). Any person or persons who shall be injured in person, property or means of support by, or in consequence of the intoxication of any minor or habitual drunkard, shall have a right of action jointly or severally in his, her or their name against any person or persons who have been notified or requested in writing by the officers authorized by law to forbid the sale or giving away of intoxicating liquors or drinks to such minor or habitual drunkard, or by the husband, wife, parents, relatives, guardian or persons having the care or custody of such minor or habitual drunkard, not to sell or give intoxicating liquors or drinks to him, and who, notwithstanding such notice or request, shall knowingly sell or give away intoxicating liquors, thereby causing the intoxication of such minor or drunkard; and the person so selling or giving away such liquors or drinks shall be liable for all damages resulting therefrom. A married woman shall have the same right to bring such suit and to control the same as a *feme sole* and all damages so recovered shall belong to her and her separate property.

SECTION 1561. Any person found in any public place in such a state of intoxication as to disturb others, or unable, by reason of his condition, to care for his own safety or the safety of others, shall, upon conviction thereof, be punished by a fine not exceeding ten dollars, or by imprisonment in the county jail for not more than five days, or by both such fine and imprisonment; but this

section shall not abridge the powers of cities and villages to provide a different mode of punishment for such offenses.

SECTION 1562. (As amended by ch. 156, Laws 1883). All moneys derived from such licenses shall be kept separate from other money by the town, village and city treasurers, and be applied solely to defraying the expense of the support of the poor therein, so far as is necessary for that purpose, and the residue shall go to the general fund; and in counties where the county system of supporting the poor shall have been adopted, such moneys shall be paid by such town, village or city treasurers semi-annually, on receipt thereof, unless the supervisors, trustees or common council of such town, village or city shall have, by ordinance or resolution, provided for a different way of disposing thereof (which they are empowered, in their discretion, to do) into the county treasury, and shall, when so paid into the county treasury, be applied, as far as necessary, to defraying the expense of the support of the poor of such county; all such license moneys received by any village, which, under its charter, does not provide for the support of the poor therein, shall be paid to the town treasurer of the town in which such village is situated. The action of the various town boards, village trustees and common councils in counties, where the county system of supporting the poor shall have been adopted, providing for a different way of disposing of the license moneys than the payment thereof into the county treasury for the support of the poor of the county, is hereby in all respects legalized.

Relating to the
sale of intoxic-
ating liquors.

32 Wis. 357.
55 Wis. 178.

SECTION 1563. All places, of whatever description, in which intoxicating liquors are sold in violation of law, shall be held and are declared public nuisances, and shall, upon the conviction of the keeper thereof, be shut up and abated.

Places where
liquor unlaw-
fully sold, nu-
isances.

SECTION 1564. If any tavern keeper or other person shall sell, give away or barter any intoxicating liquors on the first day of the week, commonly called Sunday, or on the day of the annual town meeting or the annual fall election, such tavern keeper or other person so offending, shall be deemed guilty of a misdemeanor, and shall, on conviction, be punished by a fine of not less than five nor more than twenty-five dollars, or by im-

Sale of, etc., on
Sunday or elec-
tion days, pro-
hibited.

60 Wis. 581.

Giving away to
be unlawful
selling—pen-
alty for.

prisonment in the county jail not to exceed thirty days, or by both such fine and imprisonment.

SECTION 1565. (As amended by sec. 9, ch. 322, Laws 1882, and ch. 284, Laws 1883.) The giving away of intoxicating liquors, or other shift or device to evade the provisions of any law of this state relating to excise or the sale of intoxicating liquors, shall be deemed and held to be an unlawful selling within its provisions, and in all cases not otherwise specially provided for, any person convicted of any misdemeanor under the provisions of any such law, shall be punished by a fine not exceeding fifty dollars, and shall pay the costs of prosecution, and in default of immediate payment of such fine and costs shall be committed to the county jail for not less than thirty days, nor more than ninety days, unless sooner discharged by the payment of such fine and costs, the words, "any law of this state relating to excise or the sale of intoxicating liquors," or any words of similar import, when used in any statute, shall be held to include and apply to all excise laws heretofore enacted, which shall remain in force, as well as all such laws which may be hereafter enacted, and to include the provisions of chapter sixty-six of the revised statutes, and all acts amendatory thereof, so far as the same may be in force. In any prosecution for an offense against, or violation of any law of this state relating to excise or the sale of intoxicating liquors, it shall not be necessary to allege or state in the complaint, information or indictment, the kind or quantity of liquor sold, or the person to whom the same was sold, but it shall be sufficient to allege generally, that the accused sold intoxicating liquor at a time and place mentioned, together with a brief statement of the facts showing such sale to be unlawful. In all cases, proof of the sale or giving away of any malt, spirituous, vinous or distilled liquor, of any name or nature whatsoever, shall be deemed proof of the sale or giving away of intoxicating liquors, without proof, that the liquor so sold or given away, was in fact intoxicating.

THE SALE OF LIQUORS TO INDIANS.

SECTION 1566. No person shall give away, sell, or dispose of, or keep for such purpose, any in-

toxicating liquors at any place upon lands belonging to, or occupied under treaty stipulations with the United States by any nation or tribe of Indians within this state; and any Indian superintendent or agent shall have authority to seize and destroy any liquor kept for such purpose within the said limits, without any other or further warrant therefor.

Sale and giving away of, on Indian lands, forbidden.

SECTION 1567. No person shall sell, barter, give or in any manner dispose of any intoxicating liquor to any Indian, or to any mix blood Indian, except civilized persons of Indian descent not members of any tribe; and every person so offending shall, for each offense, be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months, or both.

Sale to Indians forbidden.

Penalty for violation.

SECTION 1568. Every sheriff, deputy sheriff, coroner or constable shall make complaint of all persons whom he has good reason to believe to have violated the preceding section to some justice of the peace of the county, and such justice shall thereupon proceed in the manner provided by law for the arrest, trial or punishment of such offender; and if either of such officers shall neglect any such duty he shall forfeit fifty dollars, one-half for the use of the person prosecuting therefor.

Sheriffs, etc., to present names of violators of this chapter to justice; penalty for omission.

SECTION 1569. Whenever any such Indian or mixed blood Indian, belonging to any tribe, under the care or guardianship of the United States, shall be found intoxicated, any sheriff, deputy sheriff, constable, Indian agent or any employe of an Indian agent, may, without warrant, apprehend him and detain him in custody, at the expense of the county in which he is found, until, in the opinion of such officer, he is sufficiently sober to testify, and may then bring him before some justice of the peace of such county; and such Indian shall then on oath disclose the place where and the person of whom the liquor which produced such intoxication was obtained, and all the circumstances attending it; and upon his refusal so to disclose, he may be committed to the county jail until he shall so disclose, or be by said justice discharged. In case such justice shall be satisfied from such disclosure that an offense has been committed, under this chapter, he shall issue a warrant for the apprehension of the offender; and

Indian found intoxicated; proceedings to discover and punish person who furnished liquor.

proceedings thereunder shall be further had as in case of ordinary complaint. Any person resisting such arrest or detention of such Indian, so found intoxicated, shall be liable to the same penalties as for resisting a sheriff in the execution of legal process.

NOTE.—Sections 1566-1569 inclusive are but re-enactments of laws which were in existence here before the state was admitted into the Union, and have been continued to the present time. [*State v. Dostler*, 47 Wis., 278 and 297.]

OF HAWKERS AND PEDDLERS.

(Chapter LXVII, R. S. 1878.)

LICENSE OF HAWKERS AND PEDDLERS BY LOCAL AUTHORITIES.

* * * * *

SECTION 1584a. The supervisors of the several towns in this state containing villages not incorporated, and the trustees of incorporated villages are hereby authorized, and shall have power to establish rates (1) for and license and regulate the traffic of all hawkers and peddlers endeavoring to procure the sale of goods, boots and shoes, clothing and wares of whatever description (farmers' produce excepted), by putting up booths or stalls, or stopping with their vehicles or other conveyances in any of the streets, alleys, public squares or vacant lots within and near the limits of any of said villages, which shall be designated and determined by said supervisors

License by
local authori-
ties.

(1) *Form of Order Establishing Rates, and Regulating Traffic of Hawkers and Peddlers.*

The supervisors of the town of — do hereby order and establish rates for the traffic of all hawkers and peddlers, to be licensed and carried on at the places and on the days herein designated, in the unincorporated village of —, in said town, for the year ending —, 18—, as follows:

For license to person putting up stall or booth on (*specify the day or days, or town meeting day, etc.*), at — (*state the street, square or other place*), for the sale of (*describe subjects of traffic*), — dollars.

For license to person with vehicle, etc., — dollars.

The town clerk of said town is hereby authorized to issue a license or permit, as aforesaid, to the applicant therefor, upon his producing the receipt of the town treasurer, showing that the proper sum, as above prescribed, has been paid for such license into the town treasury.

Given under our hands this — day of —, 18—.

_____,
_____,
_____, } *Supervisors.*

or trustees as the case may be, during any days of public assemblages held therein, such as county or monthly cattle fairs, election or town meeting days, not to exceed twenty days in any year.

SECTION 1584b. The license (2) or permit to be provided for in the preceding section shall be good only for the day or days designated therein, and may be issued by the town or village clerk as the case may be, by and under the direction and regulations of the supervisors of such towns, or the trustees of such incorporated villages, as may have adopted the same under the preceding section.

SECTION 1584c. The provisions of, and the penalties prescribed in, sections one thousand five hundred and seventy-six and four thousand five hundred and seventy-three of these statutes shall also apply to any and all persons selling goods and wares as before mentioned, contrary to the provisions of the two preceding sections whenever the supervisors of any town or the trustees of any incorporated village have adopted the system provided for herein by resolution or otherwise; provided always, that the provisions of this and the two preceding sections shall in no way effect existing laws, regulating agricultural societies.

OF AUCTIONS AND AUCTIONEERS.

(Chapter LXVIII, R. S. 1878.)

* * * * *

Auctioneer
shall pay to
treasurer of
town or city
two per cent
on sales.

SECTION 1585 (as amended by sec. 1, ch. 291, Laws 1885). There shall be paid by the auctioneer to the treasurer of the town, city or incorporated village, for the use of such town, city or

(2) *Form of License to be Issued by Town Clerk.*

COUNTY OF —, }
Town of —, } ss.

A. B., of —, having produced to the undersigned, town clerk of said town of —, a receipt showing the payment of — dollars to the town treasurer of said town, in pursuance of an order of the town board thereof, prescribing rates and regulating the traffic of hawkers and peddlers:

This is to certify that, in virtue of said order, license is hereby granted to said A. B. to put up a booth or stall on (day or days), at (place in village), for the sale of —.

In witness whereof, I have hereunto set my hand, this — day of —, 18—.

— —, *Town Clerk*

incorporated village, upon all sales by auction made in such town, city or incorporated village, of goods, wares or merchandise, except household furniture which has been used as such, two per centum out of the gross receipts accruing from such sales, except when sale is made by virtue of a chattel mortgage, or of a rule, order or judgment of a court, or of some law of the state, or the United States, respecting the collection of some tax or duty; or in consequence of a general assignment of property or effects for the benefit of creditors; or when made of property belonging to the state, or of the United States; or when made by or on behalf of any executor or administrator; or when made for the purpose of closing up his business, by or on behalf of any merchant, who shall reside and trade in any town, city or village, and who shall have paid the taxes lawfully levied on his stock in trade, which is so sold; or when made of his farm property, by or on behalf of a resident farmer, who has paid the taxes lawfully levied on his property; provided, that in the two last cases such sale shall be made in the town, city or village in which such taxes were paid. Whenever the auctioneer or owner of the property sold, or any person employed by them or either of them, shall buy anything at any such sale, the same duty shall be paid as if any other person were purchaser thereof, and sales on credit shall be liable to duty as if made for cash.

SECTION 1586. (As amended by section 2, ch. 291, Laws 1885). No person shall exercise the business of an auctioneer by selling any goods, wares and merchandise at any sale at which the highest bidder is deemed to be the purchaser, except in cases when no duty is payable therefor, under the provisions of this chapter, unless such person shall have a license then in force, authorizing the same as hereinafter provided; and for every violation hereof, the person so offending shall forfeit fifty dollars for each offense, and pay all the duties required to be paid by this chapter.

Section 1587, R. S., repealed by sec. 3, ch. 291, Laws 1885.

SECTION 1588. (As amended by section 4, chapter 291, Laws 1885.) Every auctioneer shall, within twenty-four hours after the close of any sale at auction for which any duty shall be payable by vir-

Render an account to town, city or village clerk.

tue of this act, render to the town, city or village clerk, as the case may be, an account in writing, verified by his affidavit, of the gross amounts for which any and all goods, wares or merchandise liable to duty as above provided, have been sold by him at such sale, and the amount of duty thereon paid by him to the treasurer, as herein provided.

Section 1589 R. S. is not in terms repealed, but is substantially so, by the following:

Town, city or village clerks to present full statement of town meeting.

SECTION 1589a. (Section 5, chapter 291, Laws 1885.) Each town, city or village clerk who shall receive any report or reports on sales at auction, agreeably to the provisions of this chapter, shall present a full statement thereof to the annual town meeting in which town such report or reports have been received by a town clerk; and at the first meeting after the first day of April in each year to the village board, or to the common council of the city, in case which such reports have been received by such village or city clerk, which statement shall contain a full account of the amount of duties paid to the treasurer of such town, city or village, as the case may be, from whom paid, with the total amount of sales made by auction in such town, city or village.

Apply to secretary of state for license.

Section 7, chapter 291, Laws 1885. Every person desiring to obtain a license as an auctioneer, shall apply to the secretary of state either directly or through a treasury agent, and shall deliver to him his application in writing, signed by such applicant or his authorized agent, stating that he desires to carry on the business of auctioneer in the state of Wisconsin.

License fee required \$100.

Section 8, chapter 291, Laws 1885. Every such applicant shall be entitled to a license as auctioneer, upon paying to the state treasurer one hundred dollars license fee; provided, that no person so licensed shall exercise the business of auctioneer in the state of Wisconsin until he shall have first filed with the clerk of each town, city or incorporated village, in which he shall act and exercise the business of auctioneer, a bond (1)

(1) *Form of Bond of Auctioneer.*

Know all men by these presents, that we, C. D., as principal, and T. C. as surety, of the town of ———, in the county of

to such town, city or village in the sum of one hundred dollars, with surety, to be approved by the county judge or chairman of such town or president of such village, or the mayor of such city, as the case may be, conditioned that said auctioneer shall duly pay to such town, city or village treasurer, all the duties imposed by this chapter, and render to such clerk an account in writing, as required by section 1588. Bond.

Section 9, chapter 291, Laws 1885. The secretary of state, upon payment of his fees, shall grant to every applicant upon filing of his application and the receipt of the state treasurer showing the payment of the proper license fee, a license under his official seal, signed by himself or his assistant, authorizing such licensee to carry on the business of auctioneer in any place in the state of Wisconsin, for the term of one year from the date of such license, in conformity to the provisions of this chapter. Secretary of state to grant license.

Section 10, chapter 291, Laws 1885. Any person having a license from the secretary of state under the provisions of this chapter, as auctioneer, shall be exempt from any further license, conditions or restriction, from towns, villages or cities in this state, during the continuance of such license. Exempt from further license.

—, are held and firmly bound unto said town of —, in the penal sum of one hundred dollars, for which payment well and truly to be made to said town, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this — day of —, 18—.

The condition of this obligation is such, that if the above bounden —, being licensed as an auctioneer, shall duly pay to the town treasurer of said town of —, all the duties imposed by chapter 291, of the laws of 1885, and shall render to the town clerk of said town an account in writing, as required by section fifteen hundred and eighty-eight of said chapter sixty-eight, R. S., within twenty-four hours after the close of any sale at auction, for which any duty shall be payable, then the above obligation to be void; otherwise to remain in full force and virtue.

In presence of:

—, —,

C. D. [Seal.]

T. C. [Seal.]

I approve the within bond and surety therein.

Dated at —, this — day of —, 18—.

—, County Judge or Chairman of the Town.

LAW OF THE ROAD.

Chapter LXIX, R. 8.

7 Wis. 836.
7 Wis. 527.
20 Wis. 267.

SECTION 1591. Whenever any persons shall meet each other on any bridge or road, traveling with carriages, wagons, sleds, sleighs, or other vehicles, each person shall reasonably drive his carriage or other vehicle, to the right of the middle of the traveled part of such bridge or road, so that the respective carriages or other vehicles may pass each other without interference; and every person offending against this section shall forfeit not exceeding twenty dollars, and shall be liable to the party injured for all damages sustained thereby.

OF STRAYS, LOST MONEY AND GOODS.

(Chapter LXXI, R S 1878.)

SECTION 1608. No stray, except horses and mules, shall be taken up by any person not a resident of the town in which it is found; nor unless it is found upon land owned or occupied by him (a). Who may take up stray.
27 Wis. 422.

SECTION 1609. Every finder of a stray shall, within seven days thereafter, notify the owner thereof, if to him known, and request him to pay all reasonable charges and take such stray away; and if such owner be to him unknown, he shall, within ten days, file a notice (1) with the town clerk of the town, who shall transmit a copy thereof to the county clerk. If the stray is of less value than five dollars, he shall post copies of such notice in at least two public places in such town; but if such stray exceeds five dollars in value he shall publish such notice for four successive weeks, either in some newspaper published in the county or in an adjoining county, if one be there published nearer to his residence than any paper Finder of stray to give notice.

If owner unknown, how notice given.

(a) To constitute a stray, the animal must be found wandering, and its owner unknown, at the time, to the person who takes it up. [*Roberts v. Barnes*, 27 Wis. 422.]

The finder has seven days after taking up the stray in which to ascertain and notify the owner, if he can, before proceeding to file and post notices, or to advertise. [*Id.*]

(1) Form of Notice of Finding Stray to be filed with Town Clerk.

Notice is hereby given by the undersigned, that on the — day of —, 18—, one red cow, about seven years old, with one broken horn and white hind foot (*giving marks, natural or artificial, as near as practicable*), the owner of which is unknown, strayed upon land owned (or occupied) by me, and on which I reside, to wit: the — quarter of section —, in township No. —, of range No. —, in the town of —, and county of —, and was there found and taken up by me

Dated this — day of —, 18—.

A. B.

NOTE.—Stray horses and mules may be taken up found anywhere in the town, and by a person not a resident thereof.

Penalty for
failure to give
notice.

published in his county; but if no newspaper is published within twenty miles of his residence, then he may post such notice in three public places in his county. Such notices shall briefly describe the stray by giving its marks, natural or artificial, as near as practicable, the name and residence of the finder, specifying the section and town, and the time when such stray was taken up. For neglect or refusal to post up or publish such notice as required, the finder of such stray shall be liable in double the amount of damages sustained by the owner of such stray thereby. For neglect or failure for one year to so post and publish such notices, the finder of such stray shall be liable for its full value, to be recovered by action in the name of the town; and the amount recovered shall be added to the school fund of such town.

Finder to cause
appraisal of
stray.

§ Wis. 399.

SECTION 1610. Every finder of a stray of the value of ten dollars or more, at the time of such taking up, shall also within one month thereafter cause the same to be appraised by a justice of the peace of such town, and a certificate of such appraisal (1) signed by the justice, shall be filed in the town clerk's office. The finder shall pay the justice fifty cents for the certificate, and ten cents per mile for each mile necessarily traveled to make the same.

Stray to be re-
stored on pay-
ment of char-
ges; charges,
how fixed.

SECTION 1611. The owner or person entitled to the possession of any such stray, at any time within one year after such notice is filed with such town clerk, may have the same restored to him upon proving his right thereto, and paying all lawful charges incurred in relation to the same. If the claimant and the finder cannot agree as to

(1) *Justice's Certificate of Appraisal of Stray.*

COUNTY OF _____, }
Town of _____, } ss.

I, the undersigned, a justice of the peace of said town, do hereby certify that on the application of J. B., residing in said town, I have viewed one *red cow, etc.*, taken up by said J. B., as a stray, and do appraise said cow to be worth the sum of _____ dollars.

Given under my hand this _____ day of _____, 18—.

_____, *Justice of the Peace.*

Fee for certificate.... \$.50.
Traveling fee 1.00.

Received \$1.50 of J. B. in full for said fees.

the amount of such charges, or upon what should be allowed for the use of such stray, either party, on notice to the other, may apply to any justice of the peace of such town to settle the same, who for that purpose may examine witnesses on oath. If any amount shall be found due to the finder over the value of the use of such stray, the same, with the costs, shall be a lien upon such stray; and costs of such adjudication shall abide the decision (1) of the justice.

SECTION 1612. If no claimant for such stray shall cause its return to him as before provided, and if such stray shall not have been appraised at more than ten dollars, the finder shall thereupon become the absolute owner thereof; but if such appraised value exceeds ten dollars, such stray shall be sold at public auction by the sheriff or any constable of the county, on the request of the finder. Notice (2) thereof shall

Stray, when
and how to be
sold.

(1) *Decision of Justice as to Amount of Charges for Keeping a Stray.*

COUNTY OF ———, }
Town of ———, } ss.

Whereas, A. B. and G. H. cannot agree as to the amount of charges incurred in relation to, or upon what should be allowed for the use of a certain red cow, etc., which was, on the — day of —, 18—, found and taken up as a stray upon his lands, by said A. B., a resident of said town, and has been kept by him from that time to the date hereof, and which is now claimed by said G. H.; and the said A. B., has made application to me, the undersigned, a justice of the peace of said town, to settle said matters in difference, whereof due notice was given to said G. H.:

Now, therefore, upon due inquiry and examination of witnesses on oath, I have ascertained, and do hereby adjudge, that the reasonable charges for keeping said stray, over the value of the use thereof, amount to — dollars; and the costs herein amount to — dollars.

Given under my hand, this — day of —, 18—.

—, *Justice of the Peace.*

(2) *Form of Notice of Sale when Not Reclaimed.*

PUBLIC NOTICE.

By virtue of the statute in such case made and provided, I shall sell at public auction to the highest bidder, on the — day of —, 18—, at — o'clock in the — noon, at the house of —, in the town of —, one red cow, etc. (give full description), which strayed upon the land owned (or occupied) by J. B., residing in the town of —, and was there found and taken up by him as a stray, and the owner thereof not having appeared and made out title thereto.

Dated this — day of —, 18—

—, *Constable.*

be given, and the sale shall be conducted, and the same fees allowed therefor as in case of sales upon a justice's execution. The finder may bid at such sale, and shall, at the time of sale, deliver to such officer a statement, in writing, of his charges (2), which shall be filed by such officer with the town treasurer; and after deducting such charges, if just and reasonable, and the costs of the sale, the officer shall pay one-half of the remaining proceeds to the finder, and within ten days thereafter the other half to the treasurer of such town for its use. If the finder of any such stray shall neglect or refuse to cause such sale to be made when required by law, he shall pay to the town the value of such stray, to be recovered in an action by the town.

Penalty for failure to cause sale.

Penalty for taking away stray without the consent of finder, etc.

SECTION 1613. If any person shall, without the consent of the finder, take away any stray, taken up pursuant to this chapter, without first paying all the lawful charges incurred in relation to the same, he shall be liable to the finder for the value of such stray; and if any finder shall neglect to give, file or publish the notices, or have the appraisal made, or do any other act prescribed by this chapter, he shall be precluded from acquiring any right of property in such stray, and from receiving any charges or expenses relative thereto.

LOST MONEY AND GOODS.

Finder of money or goods to give notice.

SECTION 1614. If any person shall find any money or goods of the value of three dollars or

(2) Statement of Finder as to Charges.

STATE OF WISCONSIN, }
County of ———, } ss.

J. B., of the town of ———, in said county, being first duly sworn, on oath says that the following is a true statement of the lawful charges incurred by him in taking up, keeping, advertising and selling as a stray, *one red cow, etc.*, of which taking up, notice was filed with the town clerk of said town on the ——— day of ———, 18—, to wit:

For keeping said cow — months.....	\$.....
For filing notice with clerk.....	\$.....
For publishing and posting stray notice.....	\$.....
For justice's fees on appraisal.....	\$.....
For posting notices of sale.....	\$.....
For (other items).....	\$.....

Total..... \$.....

J. B.

Subscribed and sworn to before me, this ——— day of ———, 18—, ———, Justice of the Peace.

more, and if the owner thereof be unknown, such person shall, within five days after finding such money or goods, give notice (1) thereof in writing to the town clerk of the town in which such property was found, and shall also, within said five days, cause a notice thereof to be posted up in two public places in the same town.

SECTION 1615. Every finder of lost goods, of the value of ten dollars or more, shall, in addition to the requirements of the preceding section, within fifteen days after finding the same, cause notice (2) thereof to be published in a newspaper printed in the county, if there be one published therein; if there be none, then such notices shall be posted up in three of the most public places in the county; and if no person shall appear to claim the same who may be entitled thereto, he shall, within two months after finding such goods, and before using the same to their injury, procure an appraisal (3) thereof by a justice of the peace of his town, which appraisal shall be certified to by such justice, and filed in the town clerk's office of such town.

When notice to be published and appraisal had, etc.,

SECTION 1616. If the owner of such lost money or goods shall appear within one year after notice given to the town clerk, as aforesaid, and shall make out his right thereto, he shall have restitution of the same or the value thereof, upon his paying all the costs and charges thereon, including a reasonable compensation to the finder for his trouble.

Owner to have restitution, when.

(1) *Form of Notice of Finding Money or Goods.*

To M. N., town clerk of the town of ———:

Notice is hereby given that on the ——— day of ———, 18—, the undersigned found at or near (*state place*), in said town of ———, the following money (or goods), namely (*describe money or goods*.)

Dated this ——— day of ———, 18—.

A. B.

(2) *Notice to be Published.*

To whom it may concern:

Notice is hereby given that on the ——— day of ———, 18—, the undersigned found at or near (*state place*), in the town of ———, in the county of ———, the following money (or goods), namely (*describe money or goods*).

Dated this ——— day of ———, 18—.

A. B., of the town of ———.

(3) For appraisal, see form under section 1610.

If no owner appear, finder to pay one half net value to town treasurer.

SECTION 1617. If no owner shall appear within one year, then the finder shall pay one-half of the value thereof, after deducting all legal charges, to the treasurer of the town; and in case such finder shall neglect to pay the same on demand, after the expiration of the time aforesaid, the same may be sued for and recovered by such town.

Penalty on finder to neglect to give notice, etc.

SECTION 1618. If any finder of lost money or goods of the value of three dollars or upward shall neglect to give notice of the same and otherwise to comply with the provisions of this chapter, he shall be liable for the full value of such money or goods; one-half to the use of the town and the other half to the person who shall sue for the same, and shall also be responsible to the owner for such lost money or goods.

OF DOGS AND WILD ANIMALS.

(Chapter LXXII, R. S. 1878)

SECTION 1619. Any person may kill any dog that may suddenly assault him while he is peaceably walking, riding, or being out of the inclosure of its owner or keeper, or any dog before its return to the inclosure or immediate care of its owner or possessor, which shall be found killing, wounding or worrying any horses, cattle, sheep or lambs.

Dog assaulting person may be killed, etc.

28 Wis. 430.
33 Wis. 400.

SECTION 1620. The owner or keeper of any dog which shall have injured or caused the injury of any person or property, or killed, wounded or worried any horses, cattle, sheep or lambs, shall be liable to the person injured and the owner of such animals for all damages so done, without proving notice to the owner or keeper of such dog or knowledge by him that his dog was mischievous, or disposed to kill, wound or worry horses, cattle, sheep or lambs (a).

Owner of dog liable for damages, etc.

28 Wis. 300.
33 Wis. 504.
39 Wis. 538.
28 Wis. 436.
16 Wis. 566.
57 Wis. 321.

SECTION 1621. If any dog shall worry, wound or kill any horses, cattle, sheep or lambs, and the person owning or harboring such dog, shall not keep such dog confined after being notified of such worrying, wounding or killing, such owner or keeper shall be liable to pay damage in double the value of any horses, cattle, sheep or lambs, which may be thereafter killed or injured by such dog, to be recovered in an action by the owner of such animals; and any person may kill any such dog, if found out of the inclosure or immediate care of its owner or keeper, after twenty-four hours from the time of such notice (b).

Owner when liable for double damages.

16 Wis. 566.
41 Wis. 321.

SECTION 1622. Any person suffering personal injury by any dog in the manner set forth in the

Owner of dog liable for treble damages, for personal injury after notice.

(a) Under section 1620, R. S., the owner or keeper of a dog is liable not only for an injury to the body of a person, but also for injury to the clothes which such person was wearing at the time, although knowledge that the dog is mischievous is not proved. [*Schaller v. Connors* 57 Wis. 321.]

(b) Verbal notice to the owner of the vicious act of his dog, is all that the statute requires. [*Müller v. Spaulding et al.* 41 Wis. 221.]

Sections 1623—1625, R. S., relating to taxing dogs, repealed by ch. 57, L. 1880

first section of this chapter, may give notice to the owner or keeper, of the act done, and if after such notice such dog shall injure any person, or wound or kill any horses, cattle, sheep or lambs, or do any other mischief or injury, the owner or keeper shall be liable to pay to the person injured thereby, treble damages.

WILD ANIMALS.

Bounty on wild animals.

SECTION 1630a. (Ch. 150, L. 1881, as amended by ch. 80, L. 1882, and ch. 116, L. 1883.) 1. Every person who shall kill any wolf shall be entitled to a reward of five dollars (\$5.00), and every person who shall kill any wild cat or lynx shall be entitled to a reward of three dollars (\$3.00).

2. Any person claiming such reward, shall exhibit the carcass of the animal so killed, to the chairman of the board of supervisors of the town wherein such animal was killed, and obtain from such chairman a certificate that such animal was exhibited to him, which certificate shall be in the following form:

Forma.

STATE OF WISCONSIN, } ss.
County of ———, Town of ———, }

I, ———, chairman of said town, in said county, do certify that ——— has this day exhibited to me the carcass of a ———, which he claims to have killed in said town on the ——— day of ———, 18—, and that the scalp of said ——— was removed in my presence.

Dated this ——— day of ———, 18—.

———, chairman of the town of ———.

And the person claiming such reward shall, within sixty days after killing any animal, for the killing of which a reward is offered, produce the scalp of the animal so killed, with the ears entire, to the county clerk of said county, and shall take and subscribe in writing, the following oath:

orma.

STATE OF WISCONSIN, } ss.
County of ———, }

I, ———, do solemnly swear that the scalp produced by me is the scalp of a ———, taken and killed by me in town of ———, in this county, on the ——— day of ———, 18—; that I exhibited the carcass of such ——— to the chairman of said town immediately after killing such animal; that the certificate of said chairman now

produced by me is the genuine certificate of said chairman, signed by him in my presence; and that I have not spared the life of any wolf, wild cat or lynx within my power to kill.

Subscribed and sworn to before me this _____ day of _____, 18—.

The said oath may be taken before the county clerk or any person authorized by law to administer oaths.

3. Such clerks shall cause such scalp to be destroyed in his presence, and shall enter in a book the name of the claimant, date of oath, and amount said county paid said claimant; and shall immediately transmit to the secretary of state such oath together with a certificate under his hand and official seal that such scalp was presented to him with the ears entire, and that he caused such scalp to be destroyed in his presence, and that the said county of _____ paid the said _____, who subscribed the said oath, the sum of _____ dollars for the killing of said _____ mentioned in said oath. Such oath and certificate shall be upon blanks to be furnished by the secretary of state; on receipt of such oath and certificate the secretary of state shall audit such claim, and the same shall be paid out of the state treasury.

Scalp shall be destroyed.

4. For the destruction of wolves, wild-cats or lynxes it shall be lawful to put out baits containing poison between the first day of December and the first day of March, but the same shall not be placed within eighty rods of a dwelling house, and the person putting out said baits shall, before putting out such baits, post in three public places in the town, notice of the putting out such baits, describing the land and location on which such baits are placed and the date when put out, and within three days after the first day of March shall take up and effectually destroy the same. For failure or neglect to so post such notices, or to so take up and destroy said baits, the person so putting out the same shall be liable for all damages sustained by such failure or neglect, and shall also forfeit the sum of ten (10) dollars.

Poisons.

5. The same reward shall be paid for any wolf, lynx or wild cat, so destroyed by poison, as is provided by section one (1) of this act, and there is hereby appropriated out of any moneys in the

Animals killed by poison.

treasury not otherwise appropriated a sufficient sum of money for the purposes of this act.

County to pay
equal reward.

6. No person shall be entitled to, or receive any reward from the state, as provided in this act for the killing or destroying any wolf, wild-cat or lynx, unless the county in which said wolf, wild-cat or lynx shall be killed, shall pay to the person a reward equal to the amount named in section one (1) of this act.

7. All acts and parts of acts contrary to the provisions of this act are hereby repealed.

OF THE DISTRESS OF ANIMALS DOING DAMAGE.

(Chapter LXXIII, R. S. 1878)

SECTION 1631. The owner or occupant of any lands may distress any beast doing damage on his premises, either while upon the premises or upon immediate pursuit of such beasts escaping therefrom, and before returning to the inclosure of or to the immediate care of the owner or keeper, and may keep such beasts upon his premises or in some public pound in his town, city or village, until his damages shall be appraised, as hereinafter provided (a). If the owner of such beasts be known to the person distressing, and resides within the same town, city or village, the person distressing shall give a written notice (1)

Distress, when
and by whom
made.

23 Wis. 460.
34 Wis. 666.
36 Wis. 42.

(a) Section 1, Ch. 51, R. S. 1858, provided: "It shall be lawful for the owner or occupant of any land to distress all beasts doing damage within his inclosure." *Held*, when a horse, being in the street, was tearing down the fence surrounding an inclosure, he was liable to be *distressed* as "doing damage within the inclosure." [*Pettit v. May*, 34 Wis. 666.]

Beasts doing damage in the highway not distressable under the provisions of this chapter. [See *Taylor v. Welbey*, 36 Wis. 42.]

(1) Form of Notice to Owner of Beasts Distressed Doing Damage.

COUNTY OF _____, }
Town of _____, } ss.

To A. B., of the town of _____:

Take notice that on the _____ day of _____, 18—, the undersigned, owner (or occupant) of _____ (describe premises), in the town of C., did distress (four) cows (hogs or horses), of which you are owner, doing damage on my premises aforesaid, and while being thereon (or, upon immediate pursuit of such beast, escaping from said premises, and before returning to the inclosure of or to the immediate care of their said owner, or, of their keeper), and that said beasts are now detained upon my said premises (or, in a public pound in said town of C., stating where).

And you are hereby further notified that I will, on the _____ day of _____, at _____ o'clock in the _____ noon, apply to P. S., a justice of the peace of the town of _____, for the appointment of three disinterested freeholders of said town of C., to appraise the damages done by said beasts.

E. F.

Dated this _____ day of _____, 18—.

NOTE.—The party giving above notice should retain a copy for future reference.

Persons dis-
training to no-
tify owner.

What notice to
contain.

Appraisers ap-
pointed.

Proceedings of
appraisers to
ascertain, etc.

23 Wis. 460.

to such owner within twenty-four hours, but if he shall reside in the same county, but not in the town, city or village, within forty-eight hours, Sundays excepted, specifying therein the time when and the place where distrained, the number of such beasts, and the place of their detention, and that at a time and place, which shall not be less than twelve hours after the serving of such notice, he will apply to some justice of the peace of the county (naming him), for the appointment of three disinterested freeholders of such town, city, or village, to appraise the damages; but if such owner be unknown, or does not reside in the county, he shall apply for the appointment of such appraisers without notice, and within twenty-four hours after such distress; and upon such application, such justice of the peace shall appoint (1) in writing, three disinterested freeholders of such town, city or village, to appraise the damages, and shall receive fifty cents therefor.

SECTION 1632. Such freeholders shall be immediately notified, and shall immediately repair to the place and view the damages done, and they may take the evidence of any witnesses of the facts and circumstances necessary to enable them to ascertain the extent of such damages, and the sufficiency of any fence around the premises

(1) *Form of Appointment of Freeholders to Appraise Damages.*

To — — — — — and — — — — —, of the town of — — — — —, in — — — — — county:

It appearing to the undersigned, a justice of the peace of said county, that E. F., of said town of — — — — —, did, on the — — — — — day of — — — — —, 18—, restrain (four) cows (or hogs or horses) doing damage on his premises (describe same) in said town, and while the said beasts were on such premises (or upon immediate pursuit of such beasts escaping from said premises, and before returning to the inclosure of or to the immediate care of their owner, or of their keeper), and the said E. F., having on the — — — — — day of — — — — —, 18—, applied to the undersigned, a justice of the peace of said county of — — — — —, for the appointment of three disinterested freeholders of said town of — — — — —, to appraise the damages done by said beasts, and it appearing that due notice of such distress and application have been given to A. B., the owner of said beasts (or, it appearing that the owner of said beasts is unknown, or does not reside in said county of — — — — —): I do therefore hereby appoint you, the said — — — — —, — — — — — and — — — — —, as disinterested freeholders of said town of — — — — —, to appraise such damages.

— — — — —, Justice of the Peace.

where such damage was done, if any dispute shall arise touching the same, and for such purpose may administer oaths to such witnesses (a). They shall certify under their hands the amount of such damages, and the cost of keeping such beasts to that time, with their fees for services, not exceeding one dollar per day each, and their determination as to the sufficiency of such fences, if in dispute; and their decision as to such damages and the sufficiency of such fences shall be conclusive (2).

(a) Appraisers, in ascertaining the damages in question, have no right to take into consideration damages done at some previous time. [*Warring v. Triggs*, 23 Wis. 460.]

(2) *Form of Appraisers' Certificate.*

COUNTY OF _____, { ss.
Town of _____, {

We, the undersigned, disinterested freeholders of said town, having been appointed by _____, a justice of the peace of said county of _____, on the _____ day of _____, 18—, to appraise the damages done upon the premises of E. F., in said town of _____, by (four) cows (*horses or otherwise*) belonging to A. B., of the town of _____, which beasts were distrained by said E. F., on the _____ day of _____, the said premises being described as follows: (*describe same*), _____, do hereby certify that immediately upon such appointment we repaired to the premises aforesaid, and viewed the damages done,* and (*if such be the fact*, having taken the evidence of witnesses of the facts and circumstances necessary to enable us to ascertain the extent of such damages) we certify that the amount thereof, as ascertained by us, is _____ dollars; and that the cost of keeping said beasts from the time the same were so distrained, as aforesaid, to the date hereof, is _____ dollars, and our fees for services herein amount to _____ dollars.

(*If dispute shall arise, say*): *and a dispute having arisen between the said E. F. and A. B., the owner of said beasts, touching the extent of such damages, and the sufficiency of the fence around said premises where such damage was done, we then and there duly took the evidence of witnesses to the extent of the damages, and the sufficiency of the fence in question, and having carefully examined the facts and circumstances in relation thereto, we certify that the amount of such damages, as ascertained by us, is the sum of _____ dollars; that the cost of keeping said beasts from the time the same were distrained, as aforesaid, to the present, is _____ dollars, and that our fees for services herein, amount to _____ dollars.

And we hereby determine that the fence around said premises, at the time the said damage was done, was sufficient (or insufficient, as the case may be).

Given under our hands this _____ day of _____, 18—.

_____,
_____, } *Appraisers.*
_____, }

NOTE.—It will be observed that the appraisers have no right to examine witnesses as to the sufficiency of fence, or make any determination in regard here to, unless there is a dispute upon that subject.

Beasts to be
impounded and
sold if damages
not paid, etc.

SECTION 1633. Unless the damages so ascertained, together with the fees of the appraisers and justice, shall have been paid within twenty-four hours after such appraisal, the person distraining shall cause the beasts distrained to be put into the nearest pound of the same town, city or village, if there be one, and if not, then in some secure enclosure therein, where the same shall remain until sold as hereinafter directed, or until such damages, fees, and the costs of keeping such beasts after appraisal, shall be paid, or until otherwise seized or discharged according to law. Such beasts shall be furnished with suitable food from the time of seizure until discharged therefrom or sold; and the expense thereof, after the appraisal, shall be added thereto and paid as additional costs; and if such beasts be put in a pound, the certificate of appraisal shall be delivered to the keeper of such pound.

Beasts to be
fed, etc.

When beasts
may be sold.

SECTION 1634. The pound master of any such pound shall receive and keep any beasts so delivered to him, and unless seized or discharged according to law within six days, shall sell such beasts, or so many as shall be necessary to pay such damages, fees and costs, at public auction, giving two days' notice of such sale by notice posted upon such pound and at three public places in such town, city or village.

Notice of sale,
how given.

If no pound,
beasts how
kept.

SECTION 1635. If, in consequence of there being no pound within such city, town or village, such beasts shall be kept in some other enclosure, and if the same shall not be discharged in the manner hereinbefore provided, within six days after being placed therein, the sheriff or any constable of the county, shall sell such beasts, or so many as shall be necessary to pay such damages, fees and costs of keeping, upon the same notice (1) as is required in case of a constable's sale of personal property taken by execution.

When sheriff
may sell.

(1) *Form of Notice of Sale of Beasts by Sheriff or Constable.*

COUNTY OF ———, }
Town of ———. } ss.

Notice is hereby given that on the ——— day of ———, 18—, at (specify place), in said town of ———, at ——— o'clock in the ——— noon, I will sell at public vendue the following beasts (describing them), or so many of them as shall be necessary to pay the damages duly ascertained and certified to

SECTION 1636. From the proceeds of such sale the person making it shall retain his fees therefor, which shall be the same as are allowed to constables upon sales of personal property on execution, and the cost of keeping such beasts; and he shall pay to the person who distrained such beasts the damages so certified, with the fees of the appraisers and justices, and pay the surplus, if any, to the owner of such beast, if known. If no owner appear at the time of sale or within one week thereafter and claim such surplus, it shall be paid to the treasurer of such town, city or village. If such money shall not be applied for within one year thereafter, the treasurer shall place the same in the town treasury to be expended in the support of the poor; but if the owner shall apply therefor, and make proper proof of ownership within six years after its receipt by such treasurer, it shall be paid over to such owner, deducting two per cent. for fees.

Proceeds of sale, how applied.

Town treasurer to retain surplus, unless demanded by owner.

When surplus to be paid into poor fund.

have been done by said beasts on the premises of E. F., in said town, together with the fees and costs of keeping, authorized by law.

Dated this — day of —, 18—.

(Signature of Officer).

NOTES.—Previous notice of sale by sheriff or constable must be given twenty days successively by fastening up written or printed notices thereof, in three public places of the town where such sale is to be held. See section 2601.

OF WEIGHTS AND MEASURES.

(Chapter LXXVI, R. S. 1878.)

* * * * *

Town board
may procure at
the expense of
town.

SECTION 1662. (As amended by sec. 5, ch. 181, L. 1885.) The town board of each organized town may, at any time in their discretion, procure and replace when necessary, for the use and at the expense of the town, a complete or partial set of weights and measures, scales and beams, in exact conformity to the public standard, kept by the county treasurer or state sealer of weights and measures, which shall be tried and proved, sealed and certified by the state sealer of weights and measures or county treasurer, and shall then be deposited with and preserved by the town clerk as public standards for the town. The town clerk shall be the town sealer of weights and measures, may have a like seal and receive like fees as the county treasurer. Once in every five years from the first day of February, 1880, the town clerk shall cause all standards in his keeping to be tried, proved and sealed by the county standards under the direction of the county treasurer.

Penalty for
neglect of sealer
to perform
duties.

SECTION 1663. If any sealer of weights and measures shall neglect to perform any duty imposed by law, or shall prove and seal any weight, measure, scale or beam by any public standard which shall not have been tried, proved and sealed as prescribed by this chapter, he shall forfeit for each such offense ten dollars.

Steelyards
used, to be an-
nually proved.

SECTION 1664. The vibrating steelyards, which have heretofore been allowed and used in this state, may continue to be used; but such beam and the poises thereof shall be annually tried, proved and sealed by a sealer of weights and measures, like other beams and weights.

What to be a
bushel.

SECTION 1665. (As amended by ch. 121, L. 1881.) Whenever either of the articles as commodities

in this section mentioned shall be sold by the bushel, and no special agreement as to the measure or weight thereof shall be made by the parties, the measure thereof shall be ascertained by weight, and shall be computed as follows: Sixty pounds for a bushel of wheat, clover seed, potatoes or beans; fifty-seven pounds for a bushel of green apples or onions; fifty-six pounds for a bushel of rutabagas, flax seed, rye or Indian corn shelled, and seventy pounds of Indian corn unshelled; fifty-five pounds for a bushel of sweet potatoes; fifty pounds for a bushel of rape seed, millet seed, buckwheat, beets, carrots or green cucumbers; forty-eight pounds for a bushel of barley, Hungarian grass seed or corn meal; forty-five pounds for a bushel of timothy seed; forty-four pounds for a bushel of hempseed or parsnips; forty-two pounds for a bushel of common flat turnips; thirty-four pounds for a bushel of barley malt; thirty-two pounds for a bushel of oats; twenty-eight pounds for a bushel of dried apples or dried peaches, and eighty pounds for a bushel of unslacked lime.

SECTION 1666. The half bushel, and the parts thereof, shall be the standard measure for charcoal, fruits and other commodities customarily sold by heaped measure; and in measuring such commodities the half bushel, or other smaller measure, shall be heaped as high as may be, without special effort or design.

The half bushel to be the standard for what.

SECTION 1667. When any commodity shall be sold by the hundred weight, it shall be understood to mean net weight of one hundred pounds avoirdupois, and all contracts concerning goods or commodities, sold by weight, shall be construed accordingly, unless such construction would be manifestly inconsistent with the special agreement of the parties contracting.

Hundred weight defined.

SECTION 1668. A barrel of apples, pears, or potatoes, shall represent a quantity equal to one hundred quarts of grain or dry measure.

Apples, etc., how measured by barrel.

SECTION 1669. The standard size of boxes used for picking hops shall be not exceeding three feet long, one and one-half feet wide and two feet deep, inside measure.

Size of boxes for picking hops.

SECTION 1670. No person shall sell, buy or receive in store any grain at any weight or measure per bushel other than the standard weight or meas-

Grain to be sold only by standard weights or measure.

ure per bushel fixed by law; and for any violation hereof, the offender shall forfeit not less than five nor more than fifty dollars.

OF FRAUDULENT CONVEYANCES AND CONTRACTS.

RELATING TO PERSONALTY.

(Chapter CV., R. S., 1873.)

* * * * *

SECTION 2313. (As amended by ch. 218, L. 1885). No mortgage of personal property shall be valid against any other person than the parties thereto, unless the possession of the mortgaged property be delivered to and retained by the mortgagee, or unless the mortgage or a copy thereof be filed as provided in the next section, except when otherwise directed in these statutes. Nor shall a chattel mortgage upon household furniture be valid unless the same be signed by the wife of the mortgagor, if he be a married man, and her signature witnessed by two witnesses.

Chattel mortgages not valid unless possession given or mortgage filed.

50 Wis. 160.
51 Wis. 523.
57 Wis. 421.

SECTION 2314. Every mortgage of personal property, or a copy thereof, may be filed in the office of the clerk of the town, city or village where the mortgagor resides, or in case he is a non-resident of the state, then in the office of the clerk of the town, city or village where the property mortgaged may be at the time of the execution of such mortgage; such clerk shall indorse (1) on such mortgage or copy the time of receiving the same, and keep the same in his office for the inspection of all persons; such clerk shall also make the entries as required in subdivision ten in section eight hundred and thirty-two. Mortgages so filed shall be as valid and binding upon all persons as if the property thereby mortgaged had been, im-

Chattel mortgages, where and how filed.

3 Wis. 221.
20 Wis. 398.
21 Wis. 139.
50 Wis. 150, 160, 342.

(1) *Town Clerk's Certificate of Filing Chattel Mortgage, to be Indorsed thereon.*

COUNTY OF ———, }
Town of ———, } ss.

I hereby certify that the within instrument was received and filed in my office on the — day of — 18—, at — o'clock — M.

E. B., Town Clerk.

mediately upon the execution of such mortgage, delivered to, and the possession thereof retained by the mortgagee.

Mortgage to
expire unless
affidavit of re-
newal annexed.

56 Wis. 33.
57 Wis. 421.

SECTION 2315. Every such mortgage shall cease to be valid, as against the creditors of the person making the same, or subsequent purchasers or mortgagees in good faith, after the expiration of two years from the filing of the same, or a copy thereof, unless within thirty days next preceding the expiration of the two years, the mortgagee, his agent or attorney, shall make and annex to the instrument or copy on file, an affidavit setting forth the interest which the mortgagee has by virtue of such mortgage in the property therein mentioned, upon which affidavit the clerk shall indorse the time when the same was filed.

Effect of affi-
davit: new one
may be filed.

SECTION 2316. The effect of any such affidavit shall not continue beyond two years from the time when such mortgage would otherwise cease to be valid as against subsequent purchasers or mortgagees in good faith; but within thirty days next preceding the time when any such mortgage would otherwise cease to be valid as aforesaid, a similar affidavit may be filed and annexed, as provided in the preceding section, and with like effect.

Contracts for
sale where
title not to
pass till pay-
ment, to be in
writing and
filed.

41 Wis. 422.
51 Wis. 382.

SECTION 2317. No contract for the sale of personal property, by the terms of which the title is to remain in the vendor, and the possession thereof in the vendee until the purchase price is paid or other conditions of sale are complied with, shall be valid as against any other person than the parties thereto and those having notice thereof, unless such contract shall be in writing, subscribed by the parties, and the same, or a copy thereof, shall be filed in the office of the clerk of the town, city or village where the vendee resides, or if he shall not be a resident of the state, then in the office of the clerk of the town, city or village where the property may be at the time of making such contract, and such clerk shall file, keep and index the same in like manner as mortgages of personal property, and receive a like compensation therefor; but the effect of such filing shall not extend for more than one year after the time fixed for payment of the contract price, or for the performance of the other conditions of such sale.

SECTION 2318. A copy of any such mortgage or other instrument, or of any copy thereof, so filed,

including any affidavits annexed thereto, in pursuance of this chapter, certified (1) by the clerk in whose office the same shall be filed, shall be received in evidence, but only of the fact that such instrument, copy or affidavit was received and filed according to the indorsement of the clerk thereon, and of no other fact.

Effect of certified copy of chattel mortgage as evidence.

(1) *Form of Certificate to Copy of Paper.* See Section 832.

OF JURORS.

(Chapter CXVI, R. S. 1878.)

Who liable to
serve as jurors.

SECTION 2524. All persons who are citizens of the United States and qualified electors of the state shall be liable to be drawn as jurors, except as provided in these statutes.

1 Pin. 77; 5 Wis. 234; 8 Id. 192; 12 Id. 519; 14 Id. 393, 434; 17 Id. 674; 19 Id. 367; 22 Id. 471; 21 Id. 51; 24 Id. 57; 36 Id. 226; 55 Id. 534.

Who exempt.

SECTION 2525. (As amended by ch. 270, L. 1883.)
The following persons shall be exempt from serving as jurors: All officers of the United States, the governor, lieutenant-governor, secretary of state, attorney general, state superintendent and treasurer; all judges, clerks of courts of record, all county officers, constables, attorneys and counselors at law, ministers of the gospel or of any religious society, practicing physicians, surgeons, dentists, and the president, professors and instructors of the university and their assistants, and of the several colleges and incorporated academies, all teachers in the state normal schools, one teacher in each common school, the officers and employes in the several state institutions, one miller to each grist mill, one head sawyer and engineer in each steam saw mill and shingle mill, and one foreman and engineer in any factory or machine shop, one ferryman to each licensed ferry, one dispensing druggist in each prescription store, all telegraph operators and superintendents, conductors, engineers, firemen, collectors and station agents of any railroad, express company or canal, while in actual, regular employment as such, all officers of fire departments and all active members of fire companies organized according to law, all persons more than sixty years of age, and all persons of unsound mind, or subject to any bodily infirmity, amounting to disability; and all persons shall be disqualified from serving as jurors who have been convicted of any infamous crime; and every person drawn

and summoned and having served as a grand or petit juror at any regular term of a circuit court, shall be disqualified from serving again as a grand or petit juror in the same county for the term of one year thereafter, except he shall be summoned on a special venire, or as a talesman.

SECTION 2526. The supervisors of the several towns, the trustees of the several villages which constitute one or more separate election districts at general elections, and the aldermen in each ward in the several cities, except as hereinafter provided, shall, within thirty days after the first Monday in May in each year, make out from the last poll list of such town, village or ward, a list (1) containing the names of not less than ten, nor more than twenty persons, believed to be qualified to act as jurors. Such lists shall be certified by the officers making the same and immediately forwarded by mail, or otherwise, to the county clerks of their respective counties, who shall file the same, and lay the same before their respective county boards at their annual meeting. The provisions of this and the next section shall not apply to the counties named in section two thousand five hundred and twenty-nine.

Supervisors,
etc., to make
lists of jurors.

9 Wis. 19.

* * * * *

SECTION 2529. The several county boards of the counties of Adams, Chippewa, Columbia, Dunn, Juneau, La Crosse, Marathon, Portage, Waupaca, and Wood, shall, at their annual meeting in November, select from the poll lists of the several towns, villages and wards, in their respective counties, last returned to the county clerk, the names of one hundred and forty qualified per-

Jurors in cer-
tain counties.

(1) *Form of List of Jurors.*

List of names of jurors selected from the town of ———, in ——— county: (*Give names of ten or more, not to exceed twenty.*)

We, the undersigned supervisors of said town, hereby certify that the above list was made out by us from the last poll list of said town, and that we believe the persons named therein are qualified to act as jurors under the laws of this state.

Dated this ——— day of ———, 18—.

— — —, }
— — —, } *Supervisors.*
— — —, }

NOTE.—Members of a company or battery of organized militia, exempt from jury duty. [See Section 636, R. S.]

sons as petit jurors, and seventy-five qualified persons as grand jurors, to serve in their respective counties for the ensuing year, and make lists of the same, which shall be signed by the chairman and be forthwith delivered to the clerk of the circuit court.

Who to be
placed on jury
lists.

SECTION 2530. In preparing such jury list, the several supervisors, trustees, aldermen and county boards, shall select such persons only as they know, or have good reason to believe, are possessed of the qualifications required by law, and are of approved integrity, fair character, of sound judgment, and well informed.

OF THE COLLECTION OF FORFEITURES.

(Chapter CXLII, R. S., 1878.)

* * * * *

SECTION 3303. All forfeitures imposed by any by-law, ordinance or regulation, of any town, city or village, or of any corporation organized under the laws of this state, where special provision is not otherwise made by law for their recovery, or punishment, provided for the act or omission for which they are imposed, may be sued for and recovered pursuant to this chapter, in the name of such town, city, village or corporation. It shall be sufficient to allege in the complaint, that the defendant is indebted to the plaintiff in the amount of the forfeiture claimed, specifying the by-law, ordinance or regulation which imposes it. And when such by-law, ordinance or regulation imposes a penalty or forfeiture, for several offenses or delinquencies, it shall specify the particular offense or delinquency for which the action is brought, with a demand for judgment for the amount of such forfeiture. All moneys collected on such judgments shall be paid to the treasurer of such town, city, village or corporation.

Forfeitures imposed by towns, cities, etc., how recovered.

56 Wis. 204.

SECTION 3304. The chairman of the town shall cause an action to be commenced under this chapter for the recovery of any forfeiture, which he shall know or have reason to believe, has been incurred in his town, if the same is recoverable before a justice of the peace, and every other town officer knowing or having reason to believe that any forfeiture has been incurred, shall forthwith notify such chairman thereof.

When district attorney to sue for forfeitures; chairman to notify such attorney, etc.

SECTION 3305. Such chairman shall forthwith notify the district attorney of his county of every forfeiture which he knows, has reason to believe, or which he has been so informed, has incurred in his town, which cannot be recovered before a jus-

Chairman of town to sue for forfeitures; chairman to notify such attorney, etc.

tice of the peace, who shall forthwith cause an action to be commenced for the recovery thereof, as well as for the recovery of every forfeiture which he shall otherwise know, or have reason to believe, has been incurred; and such district attorney shall attend to and conduct any action so commenced by such chairman, when requested by him so to do.

* * * * *

Town, village and city treasurers, to collect forfeitures from justices, etc.

SECTION 3307. Every town, village and city treasurer shall demand of and recover from each justice of the peace of his town, village or city respectively, all moneys received by such justice upon judgments rendered by him in actions under this chapter, and every such justice shall, on demand of either such treasurers, produce to him his docket for examination, and all process and papers concerning, or in such actions. In case of refusal or neglect by such justice to pay over promptly such moneys upon such demand, such treasurer shall cause an action to be instituted for the recovery thereof against such justice and his sureties upon his official bond.

Forfeitures to be paid county treasurer and statement made.

SECTION 3308. On or before the first Monday of February in each year, every such town, village and city treasurer shall pay to the treasurer of his county, all moneys so collected by him accruing to the state, taking a receipt therefor; and at the same time shall file with the county clerk of his county a statement (1), upon oath, containing the names of the justices of the peace of his town, village and city, respectively, the amount of moneys so collected from each, the date of collection, the name of the defendant in each case, the cause of action, and date of the summons and judgment.

Penalties upon treasurers for neglect of duty.

SECTION 3309. If any treasurer of any town, village or city shall neglect or refuse to perform any of the duties required of him by this chapter, he shall, upon conviction, be punished by imprisonment in the county jail, not less than three

(1) *Form of Town Treasurer's Statement under Section 3308.*

Statement containing the names of the justices of the peace of the towns of —; the amount of forfeitures collected from each, the date of collection, the name of the defendant

nor more than six months, or by fine, not less than fifty nor more than three hundred dollars, or by both, in the discretion of the court; and the county treasurer shall forthwith bring an action upon the bond of such treasurer, against him and his sureties, for the recovery of any moneys which he has neglected or refused to pay over as required by this chapter.

* * * * *

SECTION 3313. In all actions, brought under the provisions of section three thousand three hundred and three, the town, city, village or corporation, in whose name such action is brought, shall be liable for the costs of prosecution; and, if judgment be for defendant, for all the costs of the action, and judgment shall be entered accordingly. In all other actions, brought under the provisions of this chapter, except as provided in section three thousand two hundred and ninety-seven, the county in which the forfeiture was incurred, shall be liable for the costs of the prosecution, and, if judgment be for defendant, for all the costs of the action.

Who liable for costs.

53 Wis. 138.
55 Wis. 206.

in each case, the cause of action and the date of the summons and judgment.

Names of Justices.	Amount of moneys collected from each.	Date of collection.	Names of defendant in each case.	Cause of action.	Date of the summons.	Date of judgment.
.....
.....
Total....

Dated this — day of —, 18—.

_____,
Town Treasurer.

STATE OF WISCONSIN, }
County of —, } ss.

_____, town treasurer of the town of —, in said county, being duly sworn, says the foregoing statement made by him is correct.

(Signature.)
Subscribed and sworn to before me, this — day of —, 18—.

_____,
Justice of the Peace.

OFFICIAL MALFEASANCE.

(Chapter CLXXXV, R. S., 1878.)

OFFENSES AGAINST PUBLIC POLICY.

Penalty on public officers, who shall have interest in purchases, sales, contracts, bids, tax titles or deeds, or be guilty of any malfeasance in office.

4 Wis. 163.
5 Wis. 596.
6 Wis. 629.

SECTION 4549. Any officer, agent or clerk of the state, or of any county, town, school-district, school board, city or village therein, or in the employment thereof, or any officer, regent, treasurer, secretary, superintendent, clerk or agent, or agent of any penal, correctional, educational or charitable institution, instituted by or in pursuance of law, within this state, or any member of any body or board, having charge or supervision of such institution, who shall have, reserve or acquire, any pecuniary interest, directly or indirectly, present or prospective, absolute or conditional, in any way or manner, in any purchase or sale of any personal or real property, or thing in action, or in any contract, proposal or bid in relation to the same, or in relation to any public service, or in any tax sale, tax title, bill of sale, deed, mortgage, certificate, account, order, warrant or receipt, made by, to or with him, in his official capacity or employment, or in any public or official service, or who shall make any contract or pledge, or contract any indebtedness or liability, or do any other act, in his official capacity, or in any public or official service, not authorized or required by law, or who shall make any false statement, certificate, report, return or entry, in any book of accounts or of records, in respect to anything done or required to be done by him officially, or in any public or official service, shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding five hundred dollars.

Penalty on officers who shave orders, or discount claims or wilfully neglect duty.

3 Pin. 373.

SECTION 4550. Any person mentioned in the next preceding section, who shall pay, redeem, discount or purchase, any debt, claim or demand in favor of any other person, against the state or any county, town, school-district, school board, city or village therein, or against any fund thereof,

below the true and full amount thereof, or who shall pay any such debt, claim or demand, for any purpose, out of any fund not provided for such purpose, or who shall willfully violate any provision of law, authorizing or requiring anything to be done, or prohibiting anything from being done, by him in his official capacity or employment, or who shall refuse or willfully neglect to perform any duty in his office, required by law, or shall be guilty of any willful extortion, wrong or oppression therein, shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding five hundred dollars.

* * * * *

SECTION 4552. Any person holding or exercising any office under the laws or constitution of this state, who shall, for any reward or gratuity paid or promised, grant to another the right or authority to discharge any of the duties of such office as deputy or otherwise, or any person who shall give or promise any such reward or gratuity in consideration of any such grant or deputation, shall be punished by fine not exceeding five hundred dollars, and such grant or deputation shall be void; and such officer so offending shall forfeit his office and be disabled from holding the same for the remaining term thereof.

Penalty on officer appointing deputy for reward.

SECTION 4553. Any public officer whatever, in this state, who shall, after the expiration of his term of office, refuse or willfully neglect to deliver, on demand, to his successor in office, after such successor shall have been duly qualified and be entitled to said office according to law, all moneys, records, books, papers, or other property belonging to said office, and in his hands or under his control by virtue thereof, shall be punished by imprisonment in the county jail, not more than six months, or by fine not exceeding one hundred dollars.

Penalty on officer refusing to deliver to successor money, etc.

SECTION 4554. Any public officer whatever, in this state, whose duty it shall be by law to make any official certificate in respect to any matter or thing, who shall state in such certificate, in respect to anything material, that which he knows

Penalty on officer for false certificates.

to be false, or that which he has not good reason to believe is true, shall be punished by imprisonment in the county jail, not more than six months, or by fine not exceeding one hundred dollars.

MISCELLANEOUS.

SECTION 984. When the state, or any county, town, city, village or school-district shall have sustained any damage by reason of the breach of any of the conditions of any official bond, or shall be entitled to recover any damages, money, penalty or forfeiture on any official bond, it shall be the duty of the attorney general in the case of the state; of the chairman of the county board in case of a county; chairman of the town board in case of a town; the mayor in case of a city; the president in case of a village; and the director in case of a school-district, to prosecute or cause to be prosecuted all actions against the officer giving such bond and his sureties, necessary for the recovery of the damages, money, penalty, or forfeiture for which they may be so liable by virtue of such bond; and it shall be the special duty of the treasurer of the state and of every county, town or other municipality to cause such actions to be commenced against every officer and his sureties on his official bond, for every breach thereof in refusing or neglecting to pay over according to law, all moneys received by him; and such bonds shall be prosecuted by other officers when specially directed by law. Every action mentioned in this section shall be prosecuted in the name of the state, county, town or other municipality to which such bond is given.

Actions on official bonds.

17 Wis. 215.
20 Wis. 210.
21 Wis. 684.
27 Wis. 506.
31 Wis. 217.
37 Wis. 43.
40 Wis. 469.

SECTION 2577 (as amended by ch. 146, Laws 1879). The first day of January, the twenty-second day of February, the fourth day of July, the twenty-fifth day of December, the thirtieth day of May, the day appointed by the governor of this state or the president of the United States as a day of public thanksgiving, and the day of holding the general election in each year, are legal holidays; and whenever either of said days shall fall on Sunday, the succeeding Monday is a legal holiday.

Legal holidays.

38 Wis. 673.
39 Wis. 533.
61 Wis. 416.

Officer to publish table of fees.

SECTION 2954. Every officer whose fees are fixed and limited by law, shall publish and set up in some conspicuous place in his office, for the inspection of all persons who have business in said office, a fair table of such fees. Every such officer shall for each day he shall neglect to so publish and set up the same, forfeit two dollars.

Sub-contractor's action against counties, &c

34 W s. 638.
42 Wis 397.
61 Wis. 689.

SECTION 3328. Any sub-contractor who has done work or labor, or furnished materials to any principal contractor, for the construction, repair, or removal of any building or machinery for any county, town, city, village, or school-district, may maintain an action therefor in the county in which such work, labor or materials were done or furnished, against such principal contractor, and such county, town, city, village, or school-district, jointly, for the recovery thereof; but no judgment shall be rendered against any defendant therein, other than such principal contractor for any amount greater than the amount due from it to such principal contractor at the time of the commencement of such action. Such county, town, city, village, or school-district, when served with the summons in any such action, may give notice thereof to such principal contractor, and, on so doing, need not further defend such action. On rendition of judgment in such action against such principal contractor, the court may also render judgment against such county, town, city, village, or school-district, for the amount due from it to such principal contractor, at the time of the commencement of such action, or to a sufficient amount to pay the judgment recovered against the principal contractor, and payment thereof shall discharge its indebtedness to such principal contractor to the amount so paid. Such principal contractor may, in such action, file in the court in which it is commenced, a bond, in such sum and with such sureties as the judge of such court shall approve, conditioned for the payment of any judgment that may be rendered in such action, and thereupon the liability of such county, town, city, village, or school-district hereunder, shall cease, and the action as to it shall be discontinued without costs to it.

SECTION 3588. Whenever any justice shall be removed from office, or shall remove out of the town in which he was elected, or his office shall in

any way become vacant, except by death, if his successor be not elected and qualified, such justice, or the person in whose possession the same may be, shall, within ten days after such vacancy shall happen, deliver to the town clerk all the books and papers in his custody, relating to his office as a justice of the peace.

Books and papers to be delivered to town clerk on vacancy in his office.

49 Wis. 329.

SECTION 3589. In case any justice shall die, and any books or papers belonging to such justice in his official capacity, shall come to the hands of any person, the town clerk may demand and receive such books and papers from the person having the same in his possession; and it shall be the duty of every such person, within ten days after any such books and papers shall come into his possession, whether demanded or not, to deliver the same to the town clerk.

Town clerk to demand books, etc., on death of justice.

49 Wis. 329.

SECTION 3590. Whenever any town clerk shall receive the books or any papers of any justice of the peace, he shall, within ten days after receiving the same, deliver them over to some other justice of the same town, and post up a notice in three of the most public places, specifying the name of the justice whose books and papers have been so delivered, and to what justice and when the same were delivered.

Duty of clerk on receipt of books and papers.

49 Wis. 329.

OF COMPELLING THE ATTENDANCE OF WITNESSES.

SECTION 4053. The subpoena may be in the form heretofore commonly used, need not be sealed, and may be signed and issued as follows:

Subpoenas, and by whom issued.

* * * * *

3. By the chairman of any committee appointed by any county board, town board, common council or village board, to investigate the affairs of the county, town, city or village, respectively, or the official conduct or affairs of any officer thereof.

SECTION 4054. The subpoena of a justice of the peace may be in the following form:

Form of subpoena by justice of the peace.

County, } ss.
Town of _____

The State of Wisconsin to _____

You are hereby required to appear before the undersigned, one of the justices of the peace in

and for said county, at my office, in said town [or before ———, designating the court, officer or person, and place of appearance], on the ——— day of ———, at ——— o'clock in the ——— noon of said day, to give evidence in a certain cause, then and there to be tried between ———, plaintiff, and ———, defendant, on the part of the ———.

Given under my hand, this ——— day of ———, 18—.

J. P., Justice of the Peace.

By whom and
how served.

SECTION 4055. Any subpoena may be served by any person, by exhibiting and reading it to the witness, or by giving him a copy thereof, or by leaving such copy at the place of his abode.

Oath and aff-
davits, be-
fore whom taken.

SECTION 4080. An oath or affidavit required or authorized by law, except oaths to jurors and witnesses on a trial, and such other oaths as are required by law to be taken before particular officers, may be taken before any judge, court commissioner, clerk of a court of record, notary public, town clerk, justice of the peace or county clerk, within the territory in which such officer is authorized to act; and when certified by any such officer to have been taken before him, may be read and used in any court of record, or not of record, and before any officer, judicial, executive or administrative. Oaths may be administered by any member of a committee mentioned in subdivision three of section four thousand and fifty-three, to any witness examined before such committee.

COPIES OF PUBLIC RECORDS AND DOCUMENTS.

Copies of doc-
uments in pub-
lic offices, when
evidence.

42 Wis. 332.
56 Wis. 476.

SECTION 4148. A copy of any document or paper, filed, deposited, entered, kept or recorded, or of any record made or kept pursuant to law, in any public office or with any public officer of the United States, or of this state, or of any county or municipality herein, or any public body or board created under any statute of the state, being certified as provided in the next section, shall be received in evidence in all cases, in like manner and with like effect as the original. If any such officer, upon being tendered his legal fees therefor, shall unreasonably refuse to furnish any such certified copy to any

applicant for the same, he shall forfeit not less than twenty nor more than one hundred dollars, one half to the person prosecuting therefor.

SECTION 4149. Whenever a certified copy of any document, or paper or record, is allowed by law to be evidence, such copy shall be certified by the officer in whose custody the same is required by law to be, to have been compared by him with the original, and to be a true copy thereof or a correct transcript therefrom; such certificate must be under his official seal or under the official seal of the court, public body or board, in his custody, when he is required by law to have or keep any such seal. Any certificate purporting to be signed, or signed and sealed as authorized by law, shall be presumptive evidence that it was signed by the proper officer, and if sealed, that it has the proper seal affixed, except when the law requires an additional certificate of genuineness.

Copies, how
to be certified.

1 Wis. 104.
4 Wis. 288.
30 Wis. 303.
33 Wis. 32.
58 Wis. 476.

OF THE WISCONSIN INDUSTRIAL SCHOOL FOR BOYS.

Chapter CCIII, R. S.

* * * * *

SECTION 4968. (As amended by chapter 206, Laws 1885.) The courts and several magistrates in any county in the state may, at their discretion, sentence to the school any such male child who may be convicted of any petit larceny or misdemeanor, and the several courts may, in their discretion, send to the said school any such male child who shall be convicted before them of any offence which under existing laws, would be punishable by imprisonment in the state prison, and the county judge, and judges of municipal courts in any county in this state may, in their discretion, commit to the said school any male child having a legal residence in said county, and being between the ages of ten and sixteen years, which, upon complaint and due proof, is found to be a vagrant, or so incorrigible and vicious that a due regard for the morals and welfare of such child manifestly requires that he shall be committed to said school; but in all cases the terms

of commitment shall not be less than to the age of twenty-one years; provided, that no child shall be committed as a vagrant or incorrigible, as in this section provided, until the supervisor of the town or superintendent of poor of the city in which such child resides shall have been notified of the arrest of such child, and permitted to appear before such judge and be heard in the matter.

CERTIFICATE.

STATE OF WISCONSIN, }
Department of State. } ss.

I, Ernst G. Timme, Secretary of State of the state of Wisconsin, do hereby certify that the foregoing compilation of town laws has been printed as required by section 3, laws of 1885, and that they appear to be correct.

In testimony whereof, I have hereunto set my hand and affixed the lesser seal of the state, [L. s.] at the capitol, in the city of Madison, this 6th day of November, A. D. 1885.

ERNST G. TIMME,
Secretary of State.

SECTIONS R. S., 1878, INCLUDED IN THIS COMPILATION AMENDED,
AND BY WHAT SESSION LAW AMENDED.

Section, R. S.	Ch., L. 1879.	Ch., L. 1880.	Ch., L. 1881.	Ch., L. 1882.	Ch., L. 1883.	Ch., L. 1885.	Section, R. S.	Ch., L. 1879.	Ch., L. 1880.	Ch., L. 1881.	Ch., L. 1882.	Ch., L. 1883.	Ch., L. 1885.
12						39	1236					148	
14						34	1240		60			163	
17						827	1244						
18						827	1245				215	26	
20		231	849			310	1252			251			
24		815	833				1273					236	
27			107	259		416	1274						880
29			244				1276			823			
46						272	1280			137			
254					201		1291						289
412						355	1294			273			
437						124	1302					85	
461		155					1304	194				330	
463				72	298		1319	126		315			187
472			305				1320						345
490	245						1321						345
492	24						1331					31	
554						124	1339						154
663						111	1359						66
670		110 821	207	306	97 316	155	1363			118 203			138
671	190		73	11 226	287		1390		107 158	119	201		
796			232				1391	133 1307					
821				118			1392	133					
824				163			1418	18					
832				143			1480		148			224	233
840			269				1481						233
844			145				1492						
846			45	284			1502			265		121	
914		212					1541						296
916						383	1550						296
960c			8				1551					322	
994						161	1553					322	
995						161	1554					322	439
996						161	1555			174		322	438
997						54 161	1556					51 322	438
1000						161	1557		312	204			
1001						161	1558			174		332	
1003						161	1559			174		322	
1004			136				1560					322	
1014		229					1562						156
1033						217	1565				332	234	
1033						876	1585						291
1040	244	165			351		1586						291
1047			268				157						291
1050			247				1584						291
1061			74				1623		57				
1079					59		1644		57				
1081			269				1625		57				
1087	255						1662						181
1089			269				1665			121			
1090			269				1318						218
1110				188			2625					270	
1164						341	2577	140					
1164a	255		132				4058	194					
1164b	255						4400						174
1223						103	4963						206

SESSION LAWS INCLUDED IN THIS COMPILATION AND WHERE FOUND.

Chapter of laws.	Section or page.	Chapter of laws.	Section or page.	Chapter of laws.	Section or page.	Chapter of laws.	Section or page.	Chapter of laws.	Section or page.
1879.		1881.		1882.		1883.		1885.	
15	1418	118	1363	188	1110	236	1273	206	4908
84	p54	119	1390	201	1390	237	1347a	217	1033
120	1319	121	166	212	1977a	264	254	218	2313
146	2177	132	1164a		1077b	270	2525	233	1481a
190	671	137	1240	215	1244	284	1563	241	472
194	1314	145	844	226	671	287	671	243	1225a
244	1043	150	1630a	23	1294a	292	819a	265	p174
245	490	161	p59	258	1040a	296	1034a	272	46
	492		1554	259	27	298	463	289	1291
255	1087	174	1557	280	419a	309	subd19c		1585
	1164a		1558	284	846		1083		1586
		203	1365	303	670	816	670	231	Rep1587
1880.		207	subd12 670		1548	327	17		1588
		232	796		1550		15		1589a
	subd 1623	236	1004		151	333	946	293	p1
5.	A. p. 1624	240	324a		1563	333	1304		1548
	1625	244	29	322	1554	354	1040		1548a
60	124	247	1050		1555			996	1548b
107	1390a	251	1252		1556	1885.			1550
110	670	265	1502		1557				1550a
	1311	268	1047		1560	18	Note p109		1550b
18	1392		840		1563	21	1347a	310	20
143	1480	269	1081	1883.		46	1227a	344	p112
158	1390		1089			58	997	341	1164
165	1040		1090			66	1359	345	1320
212	914	273	1299	26	1245	102	1294		1321
229	1014	305	472	31	1336	103	1233	347	820a
234	20	315	1319		12	124	437	354	p09
271	997a	323	1270	30	14		554	366	412
283	Note p328			59	1079	188	1335		subd 19
291	1077a	1882.		85	1202	155	670	376	1033
307	1391			111	693		994	380	1274
812	1556	72	463	114	894a		995	416	27
815	24	80	1630a	116	1630a		993	425	Note p128
821	670	113	821	147	818a	161	997		1554
		121	1492	148	1236		1000	433	1555
1881.		130	1324a	156	1562		1001		1556
		143	subd13 832	162	788a		1003	474	1333a
8	960c	155	1325b	163	1240	174	4480	463	894b
19	824b		subd19b	167	p409	175	p203	464	p31
45	846	162	1038	202	1392a		1666		
74	1060	163	824	203	subd19a	187	1319		
112	1455a	169	1290a		1938	204	p100		

INDEX.

A.

	Sec.	Page.
ABANDONMENT —		
by relatives, leaving family charge on town; proceedings on	1506	432
of plank or turnpike road; same to be deemed highway ..	1293	324
ABSCONDING —		
parent or husband, leaving charge upon town, proceedings against	1506	432
ACCOUNTS —		
against town, how audited	821	142
of overseers of highways, when rendered and what to contain	1261	287
ACTIONS —		
on official bonds	984	499
by or against town	776	116
town board to have charge of	819	140
against town on claim, not to be brought till claim presented to board of audit	824	144
on orders, when to be brought	824a	144
against town clerk, not making school report	499	93
against overseer of highways, not paying moneys unexpended	1262	289
same, not keeping roads in repair	1340	355
against town treasurer for false return of delinquent tax, or any fraudulent act or return as to taxes, double	1116	252
1120	253	
<i>against persons for damages caused by:</i>		
altering mark or brand, double	1468	417
cutting down shade trees	1342	356
cutting down, girdling, &c., shade trees, treble damages ..	1345	357
falling tree in highway, by trespasser	1329	348
steam engine on highways	Ch. 175, L. 1885,	264
poisons	Sec. 4, 1630a	477
<i>injuries:</i>		
by dogs to sheep and other animals	1619-1621	475
by dogs to persons, etc., when treble	1622	475
to public bridge, treble	1325	345
to public highway, treble	1327	347
by selling liquor to drunkards or minors	1560	458
to sidewalks	1346a	358
<i>neglect:</i>		
to post notice of taking up stray	1609	469
or animal unlawfully at large	1488	424
or finding lost money or goods	1618	474
to build partition fence, as ordered; double cost, if built by other occupant	1393	393
to repair same; double cost, if repaired by other	1396	398
to pay fees of fence viewer, double	1403	404
to support relative when ordered	1505	432
<i>against municipalities:</i>		
for illegal taxes collected	1164	255
for injuries from defective highways	1389	353
notice of defect to be given, etc.	1389	353

ACTIONS FOR FORFEITURES.		Sec. Page.
<i>in which prosecutor shares in recovery:</i>		
<i>against:</i>		
finder of goods, not giving notice.....	1618	474
sheriff or constable, not prosecuting for sale of liquors to Indians.....	1568	461
town chairman, not electing guide boards.....	1227	264
town treasurer, not filing statement.....	839	158
<i>persons:</i>		
injuring shade trees.....	1345	351
or allowing ram to run at large.....	1490	426
RELATING TO TAXES.		
to collect personal property tax by treasurer.....	1100	242
to recover illegal taxes paid.....	1161	255
to set aside void taxes.....	1161a	256
ADJOURNMENTS—		
of elections to different places.....	16	8
of polls duties of inspectors on.....	40	27
of county canvassers for full returns.....	56	56
of town meetings.....	784,	785 426
AFFIDAVITS.....	4080	502
AGREEMENT—		
for damages in laying out highway to be filed with town clerk.....	1270	295
for damages on laying drain, to be recorded.....	1363	369
for partition of fence, how executed and recorded.....	1393	391
ALTERATIONS—		
of highways, proceedings for.....	1265	290
of school districts, how effected.....	418,	419 68
of town, made by county board.....	670	107
ANIMALS—		
<i>running at large:</i>		
stallions, bulls, boars, billy-goats, rams, and infected ani- mals, not allowed to be at large.....	1482-1492	421-426
towns may restrain.....	776	116
<i>obnoxious or diseased:</i>		
forfeiture for permitting to run at large.....	1482	421
how such, taken up, sold, etc.....	1483-1492	422-427
permitting diseased, at large, how punished.....	4605	47
wild animals, bounty for killing.....	1630a	476
proof of killing, how made.....	1630a	476
person claiming reward shall take oath; form of.....	1630a	476
scalp of, shall be destroyed.....	1630a	477
poison may be placed to kill when.....	1630a	477
notice of placing must be given.....	1630a	477
bounty not to be paid unless county pay like sum.....	1680a	478
<i>doing damage:</i>		
owner, etc., of lands may restrain, and on pursuit before return to owner.....	1631	479
on districts, to notify owner.....	1631	479
appointment of appraisers of damages, how made.....	1631	490
duty of appraisers; damages, how certified.....	1632	480
imposing and sale, when authorized.....	1633	483
to be fed, and expense added.....	1633	482
to be sold at auction on notice.....	1634	483
if in pound, sheriff or constable to sell.....	1635	482
process of sale, how applied.....	1636	483
surplus, how disposed.....	1636	483

APPEALS --

	Sec.	Page.
to county board, from refusal of town to repair highway.	1838	352
<i>in highway matters:</i>		
from order laying out, altering, etc.; how made.....	1276	305
application for, what to state.....	1276	305
applicant to give bond for costs.....	1277	307
proceedings thereon.....	1280	311
party appealing to pay costs in case of adverse decision ..	1280	313
to county judge, from commissioners' decision.....	1281	313
proceedings thereon.....	1281	314
from award of damages; how taken.....	1285	317
from award of damages; under sec. 1237	1287a	271
applicant to give bond for costs	1286	319
proceedings to select and summon jury.....	1287	319
proceedings before jury.....	1288	320
appraisal, how made	1288	321
from appraisal, to county judge, how made; proceed-		
ings on.....	1289	322
<i>drains:</i>		
from order laying out.....	1362	363
from award of damages thereon	1366	374
from re-assessment of benefits.....		387

APPLES --

one hundred quarts a barrel.....	1668	485
dried, twenty-eight pounds a bushel.....	1665	485
green, fifty-seven pounds a bushel	1665	485

APPOINTMENT --

to fill vacancies, when may be made.....	79	45
to fill vacancies in town offices	818	138
of justices of the peace	845	161

APPORTIONMENT --

of school fund income	554	101
of school money by town clerk	467, 558	75-104
of debt on division of town	672	111
of county taxes.....	1078-1077	226-227
of drainage fund.....	254-257	55-56

APPRAISEMENT --

<i>of damages:</i>		
in laying out highways, etc.....	1288	321
done by cattle.....	1633	480
of strays, how made	1610	470

APPRENTICES --

poor orphans may be bound as.....	1511	438
legal settlement follows master's	1500	428

ARMORY --

of a regiment exempt from taxation.....	1038	210
-----------------------------------------	------	-----

ASIATIC CHOLERA --

duties of Board of Health (note).....		413
---------------------------------------	--	-----

ASSESSMENT OF TAXES --

how made (see TAXES).....	1080-1087	205-236
---------------------------	-----------	---------

ASSESSMENT ROLL --

how made out, corrected, etc. (see TAXES).....	1045-1065	218-224
------------------------------------------------	-----------	---------

ASSESSORS --

in towns, elected at annual town meeting.....	808	134
board of, how constituted.....	1080	205
<i>duties of:</i>		
in valuing property in villages, when.....	913	169
in assessments in joint school districts.....	471	79

ASSESSORS—(continued).

duties of :—(continued).

	Sec.	Page.
to report statistics of agriculture.....	1010	201
and of deaf, dumb, blind, etc.....	1014	203
in assessment of taxes.....	1030-1064	205-224
as to tree belts.....	1471	418
compensation of.....	851	165

AUCTIONS AND AUCTIONEERS—

how licensed, sec. 7, ch. 291, L. 1885.....	466
to pay as duty, percentage of sales.....	1585 464
what sales by, exempt from duty.....	1585 465
to give bond to pay duties, sec. 8, ch. 291, L. 1885.....	466
to make statement of sales, sec. 8, ch. 291, L. 1885.....	465
amount of license, sec. 8, ch. 291, L. 1885.....	466
penalty for auctioneering without license.....	1586 463
secretary of state to grant license, sec. 9, ch. 291, L. 1885.....	467
person having such license exempt from other. sec. 10, ch. 291, L. 1885.....	467

AWARD—

of damages:

on laying out highway.....	1270 295
on laying county road.....	1302 333
on laying town drain.....	1363 369
on laying county drain.....	1375 361

B.

BALLOTS—

on what paper printed, sec. 10, ch. 464, L. 1885.....	36
counting and preservation of, sec. 2, ch. 464, L. 1885.....	32
how transmitted by inspectors, sec. 3, ch. 464, L. 1885.....	32
when to be destroyed, secs. 4 and 5, ch. 464, L. 1885.....	33
recount, how obtained, sec. 8, ch. 464, L. 1885.....	35
secretary of state to provide envelopes, sec. 11, ch. 464, L. 1885.....	36
penalty for printing irregular ballots, sec. 10, ch. 464, L. 1875.....	36
what to contain, and how deposited.....	82 21
for filling vacancies in representation in congress, how distinguished.....	83 21
when rejected in counting.....	42 28
defective, to be preserved, when.....	45 30
form, and how cast at town meeting.....	799 131
for justices of the peace; to designate vacancies.....	800 131
inspector wrongfully depositing, how punished.....	4545 50
any other person, how punished.....	4546 51
deceiving elector as to, how punished.....	4546 51
adding to or diminishing number in box fraudulently, how punished.....	4548 52

BALLOT BOXES—

by whom provided; how made.....	30 21
to be emptied and locked before use.....	31 21
to be sealed, etc., on adjourning polls.....	40 27
<i>frauds upon</i> :	
how punished.....	4545 50
fraudulently putting in ballot.....	4546 51
breaking open, tampering with, etc.....	4548 52

BARLEY—

forty-eight pounds, a bushel.....	1665 484
-----------------------------------	----------

	<i>Sec.</i>	<i>Page.</i>
BARREL—		
what to constitute	1668	485
BASTARDS—		
complaint by female against father	1530	442
warrant to issue thereon	1530	442
supervisors may prosecute action	1539	442
or superintendents of poor, under county system	1539	442
public authorities may institute proceedings; when	1540	443
warrant, where may be executed	1541	443
authorities may compromise with putative father	1542	443
BEANS—		
sixty pounds, a bushel	1665	484
BEASTS—		
(See ANIMALS.)		
BEETS—		
fifty pounds, a bushel	1665	484
BENEFITS—		
to land from town drain, how assessed	1363	369
tax for, how collected	1369	378
BILLY GOAT—		
penalty for letting run at large	1482	421
may be taken up and owner notified	1483	422
BLANKS —		
secretary of state to furnish, for election returns	77	44
and for statistics	1018	204
state superintendent to furnish, for school report (<i>note</i>)	466	74
BLIND —		
statistics of, to be collected	1014	208
BOAR—		
penalty for letting run at large	1482	421
how taken up; owner notified	1483	422
BOARD OF AUDIT —		
town board to be; when to meet	820	141
duties of	821	142
report of, to be read at meeting	822	143
to act on claim before sued on	824	144
to settle accounts of expenditure of highway taxes	1226	262
statement to be prepared and read at town meeting	1226	262
BOARD OF HEALTH—		
municipal board to be, when no other	1411	405
who to be, sec. 1, ch. 167, L. 1883		409
how organized, sec. 1, ch. 167, L. 1883		409-410
to appoint health officer, sec. 1, ch. 167, L. 1883		410
transmit to state board of health, name of health officer, sec. 1, ch. 167, L. 1883		410
duty of health officer, sec. 2, ch. 167, L. 1883		410
physician to report, sec. 3, ch. 167, L. 1883		411
expenses, how paid, sec. 4, ch. 167, L. 1883		411
duty of district attorney, sec. 5, ch. 167, L. 1883		411
may call state veterinary surgeon, (<i>note</i>)		422
may make sanitary regulations	1411	405
may take measures to preserve public health	1412	405
to publish rules and orders	1413	406
may abate or remove nuisances	1414	406
may enter buildings, etc.	1415	406
may procure warrant for removal of nuisances	1415	407
may remove infected persons, etc.	1416	407
in case of contagious disease	1416	407

BOARD OF REGISTRY OF ELECTORS—

	<i>Sec.</i>	<i>Page.</i>
who to constitute	20	10
their duties and powers	21-24	10-17
compensation of, how fixed	76	44

BOARD OF REVIEW—

how constituted; its duties	1060	221
-----------------------------------	------	-----

BONDS—

OFFICIAL BONDS.

of various officers (see TITLE OF OFFICE).		
of town officers, how executed	810	135
neglect to give or renew vacates office	962	194
actions upon, how and by whom brought	984	499
penalty of, where no other provision is made	810	135

MUNICIPAL BONDS.

<i>towns:</i>		
may issue, for what	776	117-118
how and when to issue	777	121
faith of town pledged to pay	778	122
to be canceled, when and by whom	102	166
to be entered in cancellation book	102	166
<i>municipalities:</i>		
to aid railroads, etc	942	180
proposition submitted to people	943	181
liability thereon, of territory	944	181
propositions, how submitted	945-948	182-185
when to be delivered	948	185
for narrow gauge roads	951-953	187-188
form of bonds, etc	956	190
on refunding of debt	960 <i>a-e</i>	191
to build bridge, issued on vote	1320-1321	343-344

MISCELLANEOUS BONDS.

on appeals in highway cases	1286	319
on appeals in drain cases	1376	331
of auctioneers sec. 8, ch. 291, L. 1885		466
of owner of obnoxious animals, to restrain same	1489	424
of license to sell liquors	1549	449
on petition for county drain	1373	380

BOUNTIES—

for tree belts, how allowed	1469	418
to be credited on taxes	1471	418
for raising shade trees on highway	1344	356
for killing wild animals	1630a	476

BOTTOMS—

of Mississippi river, private roads in, not deemed public highways	1294	325
--------------------------------------------------------------------------	------	-----

BOUNDARIES—

<i>of towns:</i>		
county board may change, when	670	107
petition for change; motion, election, etc	671	109-110
of school districts, change not to be made, when	263	57
<i>of lands:</i>		
when a river, how fence built, etc	1395	396

BRANDS AND MARKS—

town clerk to record	1468	417
penalty for using or altering, of another	1468	417

BRIBERY—	<i>Sec.</i>	<i>Page.</i>
disqualifies electors	12	2
of electors; giving or receiving for vote, how punished...	4478	75
by buying or selling vote in nominating convention, how punished.....	4479	52
influencing elector by, threat or intimidation, punishable	4480a	53
office obtained by, vacant.....	4481	53
BRIDGES—		
county board may grant charters for, free of toll.....	670	108
may levy tax to build	1819	342
tax, how expended.....	1819	342
electors may vote tax to build or repair, in towns.....	776	116
or to issue bonds to build.....	776	118
municipalities may issue bonds to build	1820	343
vote must be first taken	1821	344
on highway between towns, how kept in repair	1273	301
bonds, how issued.....	1822	344
town supervisors to have care of.....	1223	258
and may direct repairs.....	1223	258
may levy tax to build or repair	1818	342
contract may be let to keep in repair	1225	260
swing bridges between town, how repaired	1825a	345
adjoining towns, may buy.....	1825b	346
question submitted to electors.....	1825b	346
how money shall be raised	1825b	347
liability for damages by defective.....	1339	353
fast driving on, prohibited	1323	344
<i>injuries to:</i>		
penalty for.....	1825	345
BUCKWHEAT—		
fifty pounds, a bushel.....	1665	485
BULL—		
penalty for letting run at large.....	1482	421
how taken up and owner notified.....	1483	422
BURDOCK—		
occupier of land to destroy (see Canada thistle)		
penalty for failure to destroy, " "		
BUSHEL—		
pounds in, of commodities mentioned.....	1665	484
half, to be measure of what.....	1666	485
BY-LAWS—		
towns may make and enforce.....	776	116
how published	776	117
clerk to post	832	151-152

C.

CANADA THISTLE —		
commissioner of to be appointed.....	1481a	421
duty of to destroy Canada thistle, burdock, teasle, snap dragon.....	1481a	421
act to be read by chairman of town board at annual meeting	1481a	421
CANCELLATION BOOKS—		
to be kept by town clerks.....		165
what to contain.....		165-166
certain towns excepted.....		166

CANVASS OF VOTES—

(See BALLOTS.)

by inspectors of election:

	<i>Sec.</i>	<i>Page.</i>
how made	43	29
result, how announced and stated	43	29
written statement of, how made	43	29
to whom delivered by inspectors	44	30
defective ballots to be preserved	45	30
at town meeting, how made	802	132

County canvass:

how made	46-53	37-41
district canvass, how made	5457	41-45

CARROTS—

50 pounds to a bushel	1665	484
-----------------------------	------	-----

CATTLE—

towns may restrain from running at large	776	116
diseased "Texas" or "Cherokee," penalty for bringing into the state	1492	426

stray:

how taken up, etc.	1608-1613	469-472
-------------------------	-----------	---------

doing damage:

distrain, etc.	1631-1636	478-483
---------------------	-----------	---------

injured by dogs:

remedy for	1620-1622	475
forfeiture for suffering obnoxious, to run at large.	1482	421

(See ANIMALS.)

CEMETERIES—

towns may purchase grounds for	776	121
public exempt from taxation	1038	209
highway not to be laid through, when	1263	289
penalty for so laying highway (<i>note</i>)	1455	415
lots a'ter interment inalienable	1299a	327
road to, how obtained	1455a	416
town, village and cities may hold property in trust for ...		

CEMETERY ASSOCIATIONS —

may control planting of trees or erection of monuments..	1453	414
where grounds not to be laid out	1454	415

CENSUS —

when taken; secretary of state to supervise	991	196
town clerks to take	994	196
what enumeration to comprise	994, 996	196-197
clerks, to take oath	995	196
duties of clerk	997	197
penalty for failure to do duty	1001	198
taking, when commenced and completed	996	197
how taken in unincorporated villages	997	197
persons to answer questions as to	1000	198
expenses of, how audited and paid	1003	198

CERTIFICATES —

of election:

of senators and assemblyman	57	43
for county officers, etc., county clerk to issue on county canvass	50	40
to be given, notwithstanding informalities	75	43

CERTIFIED COPIES —

of public records, when evidence	4148	502
----------------------------------------	------	-----

CHAIRMAN —

(See TOWN CHAIRMAN.)

CHALLENGES —

of electors:

	<i>Sec.</i>	<i>Page.</i>
at election; who to make interrogatories, etc.....	35, 86	22-23
oath to be taken or vote rejected	38	26
of voters at town meeting	801	181

CHATTEL MORTGAGES —

town clerk to file.....	832	150
void as to third parties, unless filed or possession delivered to mortgagee and retained.....	2313	487
where filed; effect of filing	2314	487
to be invalid at end of two years, unless affidavit filed showing interest; when to be filed.....	2315	488
on filing affidavit, lien continues.....	2316	488
further renewal by affidavit	2316	488
contract of sale, title not to pass till paid for; void unless filed	2317	488
effect of certified copy of chattel mortgage as evidence...	2318	488
void, on household furniture unless signed by wife.....	2315	487

CHEROKEE CATTLE —

diseased, penalty for bringing into state.....	1492	426
------------------------------------------------	------	-----

CHILDREN —

poor:

legal settlement of legitimate to follow father's.....	1500	498
illegitimate, the mother's.....	1500	428
when not to be sent to poor house.....	1527	440
to be sent to asylum, or cared for in families.....	1527	440
when required to support poor parents.....	1502	430

binding out of:

by county board; when paupers.....	1527	440
------------------------------------	------	-----

Chippewa Indians, of Lake Superior:

civilized descendants of, may vote.....	54	
how to qualify	54	

CHOLERA, ASIATIC —

for duties of board of health, note.....	412	
------------------------------------------	-----	--

CHURCH —

property:

exempt from taxation.....	1038	208
---------------------------	------	-----

CIRCUIT COURTS —

appeals from award of damages:

for lands taken for school house site.....	481	85
may order recount of ballots.....	8	35

CIRCUIT JUDGES —

when and how elected.....	86-89	48-49
may administer oaths.....	4080	502
may remove town officers	976	194

CITIES —

general election in, where held.....	15	7
highways between, and towns, how laid.....	1274	301
may erect soldiers' monuments.....	937	179

liabilities of:

for damages from defective highways.....	1339	353
damages limited	1339a	355
for neglect in opening highway	1311	339
lien of sub-contractors on buildings of	3328	500

taxation:

board of review in, how composed.....	1060	221
common council may extend warrant.....	1108	247
tax roll, how made out.....	1078	230

CITY CLERK—	<i>Sec. Page.</i>
to keep registration blanks	23 12
to provide and keep ballot boxes	30 21
to take census; duties	994 196
fees therefor	1003 198
duties as to tax roll	1078-1086, 230-234
CITY TREASURER—	
to collect of justices moneys paid as forfeitures, and pay over to county treasurer	3307 494
and make statement to county clerk	3308 494
penalty on, for neglect thereof	3309 494
CLERGYMEN—	
exempt from serving as jurors	3525 490
CLERKS—	
<i>of election:</i>	
to act for board of registry on election day only	21 11
how chosen in towns	25 17
how in cities and villages	26 18
qualifications of	26 18
to take oath	28 20
their duties	34 22
compensation of, how fixed and paid	76 44
compensation of, as to town meetings	850 164
of municipalities, forfeiture on, for failure to make census returns	1003 198
of towns (see TOWN CLERKS)	830 149
county, city, village and town clerks shall preserve ballots Sec. 4, ch. 464, Laws 1885	33
shall not permit them to be examined except—penalty, for Sec. 4, ch. 401, Laws 1885	33
CLERK OF CIRCUIT COURT—	
may administer oaths	4080 502
to act as county canvasser, when	46 37
duty of, on appeal in highway case	271
<i>penalties and liabilities:</i>	
for official malfeasance	4549 466
for false certificate	4554 497
CLOVER SEED—	
sixty pounds, a bushel	1665 485
COLLECTION—	
<i>of forfeitures (see FORFEITURES).</i>	
<i>of statistics (see STATISTICS).</i>	
to be made annually	1004 201
<i>of taxes:</i>	
duties of town treasurer	1089 237
by levy and distress	1097 240
by action for, on personal property	1100 241
of school district	473 81
remedy when illegal	1164 255
recovery limited	1164 255
COLLECTORS—	
town treasurers to be, of taxes	886 155
COMMISSIONERS—	
county board may appoint to act on road in two counties	670 107
highway, towns may elect	1225 260
to lay state roads, duties of	1313 340
to lay highways between city or village and town	1274 301
to determine appeal from order laying highway, how appointed	1379 306

COMMISSIONERS—continued.	<i>Sec.</i>	<i>Page:</i>
their duties, fees, etc.....	1280	311
may administer oaths in road matters and certify them..	1299	327
to hear appeal from order laying drains; appointment and duties.....	1362	363
COMMISSIONERS OF PUBLIC LANDS —		
to distribute drainage fund, how and when	254	55
COMMODITIES—		
sold by the bushel, how measured.....	1665	485
COMMON COUNCIL —		
may extend tax warrant	1108	247
may grant license to sell liquors	1548	444
(see MUNICIPALITIES). To appoint board of health, Secs. 1, ch. 167, L. 83.....		409
COMMON SCHOOLS—		
(See SCHOOLS.)		
COMPENSATION —		
of officers by fees (see FEES).		
of assessors	851	165
of commissioners:		
on highway appeals.....	1280	313
of state roads	1317	342
of county and district canvassers.....	76	44
of fence viewers	1402	404
for lands taken for public use (see DAMAGES).		
of inspectors, etc., of election.....	76	44
of jury, on highway appeal.....	1290	323
of jurors on proceedings on encroachment.....	1335	351
of messengers sent for election returns	76	44
of messengers for report of statistics	1015	203
of municipal clerks for taking census.....	1003	198
of overseer of highways:		
for work on highway.....	1258	284
for collecting highway tax	1250	281
for persons authorized to take census.....	1003	198
of town assessors	851	165
other town officers.....	850	164
of town treasurer.....	840	158
of same on proceeds of sale of animals distrained.....	1636	483
commissioners of Canada thistles.....	1481a	421
CONDEMNATION—		
of lands:		
for public highways.....	1263-1317	289-341
for highways to cemeteries.....	1299a	327
for highways to fair grounds	1299a	327
for school house sites.....	477-484	81-86
CONSENT —		
of cemetery lot owner requisite to burial therein....	1455	415
CONSTABLES —		
election of, in town.....	808	134
bond of, in town	841	159
duties of:		
general enumeration	842	159-160
not to execute process, when	844	160
relating to unlawful sale of liquors	1553	483
or furnishing liquor to Indians.....	1568	461
overseer of highways may empower to collect highway tax	1253	283
such power, how given and exercised.....	1254, 1255	284

CONSTABLES—(continued).	Sec.	Page.
<i>fees of</i>	843	160
person deputized, to receive fees of	844	161
not to collect fees, when	844	161
compensation for pursuit of escaping offenders	843	160
disbursements for conveying prisoners to be allowed	843	161
penalties and liabilities for not complaining of sale of liquor to Indians	1568	461
or of unlawful sale of liquor	1568	453
CONSTITUTION —		
<i>amendment to:</i>		
vote, how canvassed	53	41
CONTAGIOUS DISEASES —		
measures to prevent spread of	1416	407
CONTEMPT —		
violation of order of court to support poor relative, to be ..	1504	431
CONTRACTS —		
towns may make	773	114
to furnish supplies for support of poor; supervisors or superintendent to have no interest in	1526	440
<i>illegal and void contracts:</i>		
of county or town for printing, in which officer shares fees	1134	253
of county, for supplies for poor, in which officers inter- ested	1526	440
of relative, absconding, etc., when	1507	432
CONVEYANCES —		
of town, by town clerk ..	775	115
COPIES —		
of chattel mortgages, when evidence	2318	488
CORN —		
shelled, fifty-six pounds a bushel	1665	494
unshelled, seventy pounds a bushel	1665	484
corn meal forty-eight pounds for a bushel	1665	485
corners of sections, (see LAND MARKS).		
CORPORATION TAX—		
of villages; board to fix amount	914	169
how amount certified to town clerk	914	169
how assessed and collected by town	915	170
COSTS AND FEES —		
officer to post up table of his fees	2954	500
punishment for illegal exaction, etc	4550	496
of appeals in highway matters, how paid	1288, 1290, 1291	820-323
party appealing to pay costs in case of an adverse de- cision	1280	313
<i>fees of officers (see FEES).</i>		
COUNTIES —		
when composed of one town, to be so considered, and may elect town officers, etc.	780	123
may issue bonds to build bridges on navigable streams ...	1320	343
<i>taxation:</i>		
to aid towns to build bridges	1819	342
for bridges over navigable streams	1320	343
tax for such bridge on navigable stream to be voted on ...	1321	344
for subscription to railroad stock, when	950	186
for guaranty of railroad bonds, when	952	188
for support of county poor, if under county system	1517	437
for purchasing and stocking county farm for poor, when ..	1523	439
for repairing of county roads, when	1308	338

COUNTY BOARD —

	Sec.	Page.
how constituted.....	663	106
cities and villages, how represented in.....	663	106
when county but one town, town board to be.....	663	107
<i>powers of:</i>		
specially enumerated.....	670	107-109
restriction on powers, by legislature	670	107
may divide towns, when; petition therefor.....	671	109
<i>relative to support of poor:</i>		
to have care of poor, not legally settled in towns.....	1517	437
may adopt county poor system.....	1519	438
proceedings to adopt same.....	1519	438
may purchase or hire buildings, lands, etc.; appoint agents. etc.....	1518	437
may elect superintendents of poor.....	1520	438
or otherwise provide for care, etc.....	1520	438
superintendents under direction of board.....	1523	439
may levy tax for support.....	1523	439
may return to town system.....	1525	439
members not eligible as superintendents; not to be inter- ested in contracts for supplies; if so, agreement void....	1526	440
may bind out minor paupers.....	1527	440
<i>relative to county drains:</i>		
may lay out drains.....	1372	379
for drainage of county lands, etc.....	1381	384
petition therefor to be filed.....	1373	380
hearing thereon, how had.....	1374	380
to award damages as board, or by committee	1375	381
to bury destitute soldiers. (Note.).....		109
<i>relating to highways, bridges and ferries:</i>		
may lay out county roads, when.....	1300	331
not to discontinue state road unless wholly in county....	1300	331
petition for laying out, etc., how made.....	1300	331
may appoint committee to act thereon, with full powers.	1300	331
notice of meeting, how given.....	1301	333
proceedings at meeting.....	1302	333
person aggrieved may appeal.....	1302	333
damages, how agreed to or awarded.....	1303	335
may open country roads, if town board neglect.....	1307	338
may adopt main highways as county roads, and levy tax to keep in repair, etc.....	1308	338
may appoint road commissioners, and let contracts to im- prove or keep in repair.....	1309	338
may assign county road to town, city or village to main- tain	1310	339
may open or repair state or county road, when local boards neglect.....	1311	339
to audit claims for damages on laying state roads.....	1315	341
to allow compensation to commissioners and surveyor for laying state roads.	1317	341
may levy tax to assist town in building bridge.....	1319	342
shall appoint commissioners to superintend same	1319	342
may issue bonds to build bridge over navigable stream when authorized by vote.....	1320	343
<i>relating to taxes:</i>		
may appoint land inspectors, etc.....	1053	217
to equalize valuation and apportion county tax, when and how	1073, 1074	226
also county school tax.....	1074	226
to apportion taxes for previous years, when.....	1075	226
to issue warrant for assessment of tax, when town fails to elect taxing officers	1152	254

COUNTY BOARD—(continued).	
<i>relating to taxes—(continued).</i>	<i>Sec. Page.</i>
to charge delinquent state and county tax and penalty to delinquent towns.....	1163 254
to charge to towns, cities, etc., losses by default of their officers.....	1157 254
<i>compensation of:</i>	
for laying, etc., highways	1306 338
<i>liabilities and penalties on members:</i>	
punishment for discounting county orders or claims against county.....	4550 496
for neglect of duty.....	4550 496
for interest in contract with county.....	4549 496
or other malfeasance.....	4549 496
for having interest in contract for printing tax list.....	1134 253
liability for neglect to comply with law relating to aid to railroads, etc.....	960 191
<i>further powers:</i>	
may allow bounties for wild animals.....	670 106
may establish dock or wharf.....	12 109
may erect soldiers monuments.....	13 109
may procure transcript of records in certain cases.....	14 109
COUNTY BUILDINGS —	
lien of sub-contractor on.....	3328 500
COUNTY CANVASS —	
(See ELECTIONS)	
COUNTY CLERK —	
<i>powers and duties of:</i>	
may administer oaths.....	4080 502
as to county drain	1373 380
on complaint that towns, etc., fail to open or keep in repair a state or county road.....	1311 339
to apportion drainage moneys	255 55
<i>relating to elections:</i>	
as to county canvass.....	46 37
by whom to be assisted.....	46 37
to issue certificates of election.....	50 40
to certify copies of canvass to governor, secretary of state, and state treasurer	52 40
and list of officers to secretary of state	52 40
to certify result of vote on amendment to constitution....	53 41
as to district canvass.....	54 41
to transmit statement to district canvassers, when.....	51 40
to furnish returns therefor.....	56 42
to transmit to secretary of state name of senator and assemblyman elect and give them certificates of election to countersign orders for, and give notice of special elections for county officers.....	82 46
when to notify other special elections	80 46
court certificates to be filed with.....	165
to furnish towns with blank cancellation books.....	166
to be custodian of ballots	32
<i>relating to census and statistics:</i>	
to appoint assistants therefor in newly organized towns..	991 196
to furnish secretary of state statistics of farm products..	1010 201
also, duplicate lists of property exempt from taxation....	1012 202
and statistics of deaf, dumb, blind, insane and idiotic....	1014 203
to send messengers for such statistical statements, when necessary	1015 203
and notify local treasurer of delinquency of clerks.....	1015 203

COUNTY CLERK—(continued).

relating to taxes:

	<i>Sec.</i>	<i>Page.</i>
to prepare and furnish blank assessment roll to assessor, etc	1032	205
and blank tax roll to town clerks	1032	205
to certify to local clerks, list of public lands sold and un- patented, and lands mortgaged to state	1046	214
to publish and furnish assessors, land inspectors' lists, when	1053	217
to transmit abstracts of valuations to secretary of state ..	1067	225
to prepare and lay before county board, statistics, etc.	1073	226
to apportion state and county tax among towns, etc.	1073	227
to include state tax on school districts, for loans	263	57
to certify same to town, city and village clerks	1076	227
and unpaid taxes of previous years	1077	227
and assessment for county drains	1378	382
to make town tax roll, when	1084	233
to furnish treasurers receipt books	1095	239
shall give supervisors notice of application for appoint- ment of commissioners to review county assessment ...	1077a	228

compensation:

for making returns of census	1003	198
------------------------------------	------	-----

penalties and liabilities:

for making false entry	4549	496
for neglect of duty	4550	496
for discounting county orders	4550	496
for making false certificate	4554	497
for false canvass of votes, etc., or false certificate thereof .	4544	50
for appointing deputy for reward	4552	497
for refusal to deliver books, papers, etc.	4553	497
for other malfeasances	4549	496
for not furnishing statistics	1019	204
or compiled returns of census	1003	198
for having interest in contract for advertisement of tax sales	1134	253

COUNTY DRAINS —

(See DRAINS)

county board may lay out	1372-1379	379-383
--------------------------------	-----------	---------

COUNTY JUDGES —

when and how elected	86-89	48-49
----------------------------	-------	-------

powers and duties of:

may administer oaths	4080	502
may act as county canvassers	46	37
on appeal from order laying, etc., highway	1276	305
on appeal from decision of highway commissioners	1281	313
on appeal from award of damages	1285	317
to require able relatives to support poor, when	1503, 1504	431
on seizure of property to support poor	1507	432

compensation:

on highway appeals from order	1280	311
on same from award	1290	323

penalties and liabilities:

for fraud as canvasser	4544	50
------------------------------	------	----

COUNTY OFFICERS —

not to be interested in contracts for printing tax lists	1134	253
---------------------------------------------------------------	------	-----

penalties and liabilities:

for malfeasance in office	4549	496
for fraud as canvasser	4544	50
for having interest in public contract	4549	496
for purchasing or discounting county orders or claims ...	4550	496
for willful neglect of duty	4550	496
for willful extortion or oppression	4550	496
for neglect of duty as to county indebtedness	960	191

COUNTY ORDERS —		
receivable for taxes.....	1091	233
officers not to purchase.....	1092	238
forfeiture for purchasing.....	1092	238
punishment for purchasing.....	4550	496
COUNTY PROPERTY—		
exempt from taxation, when.....	1038	203
COUNTY ROADS —		
(See HIGHWAYS).....	1300-1311	331-340
COUNTY SURVEYOR—		
duties of, in laying out state roads	1314	341
COUNTY TREASURER —		
<i>duties of:</i>		
in distribution of drainage fund	256	56
to receive school moneys from state treasurer; notify and pay same to town treasurer, etc	557	103
<i>in relation to taxes :</i>		
to approve and receipt for town, etc., treasurer's bond....	1080	231
to receive county orders and juror's certificates for taxes.	1091	238
not to purchase town or county orders.....	1092	238
to give town treasurer duplicate receipts for money paid.	1111	248
to credit town treasurer with unpaid and doubly assessed taxes	1114	250
to certify delinquent taxes returned by town treasurer ...	1115	251
to satisfy bond of town treasurer.....	1116	252
to issue warrant to levy on town treasurer failing to pay..	1118	253
to proceed against delinquent sheriff on his bond, when ..	1119	253
to return bonds, coupons, orders, court certificates, etc., to proper officer.....	115	
<i>penalties and liabilities:</i>		
for refusal to deliver books to successor.....	4553	497
for discounting county orders	4550	496
for neglect of official duty.....	4550	496
for appointing deputy for reward.....	4552	497
for acquiring interest in official contracts.....	4549	496
for being interested in advertisement of tax sales.....	1134	253
for receiving unverified return from town treasurer.....	1114	250
COURT CERTIFICATES —		
to be kept in cancellation book	165	
to be canceled and destroyed	166	
to be filed with county clerk.....	165	
COURT COMMISSIONERS —		
may administer oaths.....	4080	502
COUPONS—		
to be canceled and destroyed	166	
to be entered in cancellation book	166	
CREEK —		
penalty for diverting to injure highways	1327	347
CRIMES AND PUNISHMENTS —		
bribery	4478-4481	52-53
frauds and malfeasance in elections	4543-4548	49-52
bulldozing at elections	4480a	53
<i>official malfeasance:</i>		
discounting claims, etc.....	4550	496
willful neglect of duty.....	4550	496
oppression or extortion.....	4550	496
appointing deputy for reward.....	4552	497
refusing books and papers to successor	4553	497
making false certificate	4554	497

CRIMES AND PUNISHMENTS—(continued).

	MISCELLANEOUS.	Sec.	Page.
laying highway, etc., through cemetery (<i>note</i>).....		4598	289
CUCUMBERS—			
green, 50 pounds a bushel.....		1665	484

D.

DAISYS—			
white, (see WHITE DAISYS.)			
DAMAGES—			
by drains on laying, etc., how assessed.....	1363	369	
highways:			
on laying (see HIGHWAYS).....	1269-1315	293-341	
for injuries from defective highway, etc.....	1839	353	
damages limited	1339a	355	
DELIVERY—			
of books, papers, etc., of justices, on expiration of term.	3588-3590	500-501	
penalty of public officer refusing, etc	4553	497	
DEPUTY—			
of town clerk.....	831	149	
penalty of public officer for appointing for reward.....	4549	496	
DISEASES —			
measures by boards of health to prevent contagious.....	1416	407	
prisoner with infectious, to be removed to hospital.....	1417	408	
further duties of health officers (see ch. 137, Laws 1883) ..	409-411		
DISEASED ANIMALS—			
penalty for permitting at large... ..	1489, 1491	424-426	
state veterinary surgeon must visit and inspect suspected cases of infectious or contagious animals upon request of local boards of health, see note to page		422	
DISTRAINT —			
of male animals running at large.....	1482-1491	421-426	
DISTRESS —			
of animals doing damage	1631-1636	479-483	
DISTRIBUTION —			
of school fund income	554	101	
DISTRICTS —			
(See SCHOOLS.)			
DISTRICT ATTORNEY —			
to prosecute in justice court for selling liquors without license	1552	452	
to prosecute actions for forfeitures.....	3305	493	
to prosecute for offenses against public health.....		411	
DISTRICT BOARDS —			
of school district, how constituted.....	432	73	
meetings of, how called	432	73	
vacancies in, how filled.....	433	73	
DISTRICT CANVASS —			
(See ELECTIONS.)			
how and by whom conducted	54-57	41-43	

		<i>Sec. Page.</i>	
DITCHES —			
(See DRAINS.)			
how laid out, enlarged, etc.....	1359	360	
penalty for filling, when used to drain highway.....	1326	347	
DIVISION —			
<i>of towns:</i>			
petition, vote for, etc.....	671	109	
indebtedness apportioned on.....	672	111	
<i>fences</i> (see FENCES).....	1389-1408	389-404	
DOGS —			
person assaulted by, may kill.....	1619	475	
<i>owner or keeper:</i>			
liable for injuries caused by	1620	475	
when liable for double damages.....	1621	475	
when liable for triple damages	1622	475	
DONATIONS —			
to free libraries.....	936	179	
DRAINS —			
overseer of highway may make	1236	268	
duty of supervisors.....	1363	369	
bulkhead in drain.....	1363	372	
may be open or covered	1359	360	
may be iron pipes, sewer pipes, cement or drain tiles.....	1359	360	
proceedings to lay out, enlarge, etc.	1359	360	
petition for, how made to town board.....	1359	360	
notice of time and place of hearing, how served.....	1360	361	
supervisors to meet, view and decide.	1361	361	
may adjourn hearing.....	1361	361	
survey and map to be made, filed with order, etc.....	1362	362	
appeal from order, how taken; notice of, how served.....	1362	362	
commissioners to hear appeal, how selected.....	1362	362	
how summoned, and their duty.....	1362	362	
their decision to be signed and returned	1362	364	
costs, how paid on affirmance; on reversal.....	1362	369	
division into sections; sections, how maintained.....	1363	369	
benefits and damages, how ascertained	1363	369	
expense on section, how apportioned	1363	370	
change of grade, or sloping off, how ordered.....	1363	371	
cost of construction, common, how assessed	1364	372	
in two or more towns, etc.....	1365	373	
<i>appeals:</i>			
from award of damages.....	1366	374	
notice of, served on town clerk.....	1366	375	
jury, how drawn, summoned.....	1367	375	
jury to meet, view and appraise.....	1368	376	
majority may decide.....	1368	376	
rule of assessment	1368	377	
award, how made and returned.....	1368	377	
costs, how charged.....	1368	378	
assessment of benefits to be entered in tax roll.....	1369	378	
deficits, town clerk to apportion to lands benefited	1369	378	
construction of, how let and paid for	1370	378	
additional assessment, how made	1371	379	
COUNTY DRAINS.			
county board may lay out, in two or more towns.....	1372	379	
petition for, how signed and presented.....	1373	380	
bond for costs, how given	1373	380	
survey to be made.....	1373	380	
county clerk to publish notice.....	1373	380	

DRAINS—(continued.)**COUNTY DRAINS—(continued.)**

	<i>Sec.</i>	<i>Page.</i>
board to meet, view and decide.....	1374	380
survey, map and order to be filed.....	1374	381
damages, how fixed or awarded.....	1375	381
board may adjourn.....	1375	381
appeal from award, how noticed.....	1376	381
owners may join in appeal.....	1376	381
bond on appeal.....	1376	381
jury, how selected, etc.; duties of.....	1377	381
cost of construction, how assessed.....	1378	382
how divided and maintained.....	1378	382
county board to fix time for completion.....	1379	383
notice of letting work, how published.....	1379	383
contractor to give bond; work when relet.....	1379	383

MISCELLANEOUS.

alteration of, same procedure for.....	1380	388
to drain public lands, may be laid through private lands..	1381	384
damages fixed as in other cases.....	1381	384
appeals as in other cases.....	1381	384
to be maintained by owner, heirs, etc.....	1382	384
<i>obstructions in:</i>		
penalty for placing.....	1383	384
removal of, town board to compel.....	1384	384
when denied, jury to decide.....	1385	385
proceedings of jury; if found, how removed.....	1386	386
if not found, town to pay cost and charge to complainant.	1387	386
<i>record of laying, etc.:</i>		
to be evidence of regularity.....	1388	386

RE-ASSESSMENT OF BENEFITS IN THE CONSTRUCTION OF DRAINS, WHERE ORIGINAL ASSESSMENT IS DECLARED VOID.

costs and benefits uncollected or uncollectible, when may be re-apportioned and re-assessed.....	1	387
duty of supervisors.....	2	387
appeal may be taken.....	3	388
duty of town clerk.....	4	388

DRAINAGE FUND—

how distributed.....	254	55
apportionment of, among towns.....	255	55
how expended in towns.....	256	56

DRUNKARD—

action for selling liquor to.....	1560	458
who may bring such actions, and when.....	1560	458

DRUNKENNESS—

in public places, how punished.....	1561	458
-------------------------------------	------	-----

E.**EDUCATION—**

as to common schools (see SCHOOLS).....	412	64
-----------------------------------------	-----	----

ELECTION DISTRICTS—

town board may divide town into.....	27	19
when must divide.....	27	19

ELECTIONS—

general:

	<i>Sec.</i>	<i>Page.</i>
when held	14	7
place of holding	15	7
adjournment of, to different place	16	8
notices of, how given by secretary of state	17	8
how, by county cl-rks	18	9
how, by town and village clerks	19	10
how, by inspectors of election	19	10
conduct of; electors' names to be checked on registry	24	15
voter not registered, how to vote	24	15
list of non-r-gistered voters to be kept	24	15
notice of additions and omissions, how given	24	17
how conducted	25	17
polls, when and how opened and closed	29	20
when and how opened at town meetings	796	180
in cities, polls may be opened early	29	20
order, how preserved	41	27
ballot boxes, how made and kept	30	21
ballot boxes, how to be used	31	21
how ballots cast and received	32-34	21-22
when ballots to be numbered (see BALLOTS).		
poll lists, how kept	34	22
challenge of votes at	35-39	23-27
rules governing question of residence of electors	37	25
vote rejected, on refusal to answer when challenged	38	26
oath to person challenged at	38	26
votes of insane persons, etc., to be rejected	39	27
adjournment of poll, how to be made	40	27

canvass of votes:

by inspectors of election, how made	42	28
-------------------------------------------	----	----

result:

how announced	43	29
---------------------	----	----

ballots:

when to be rejected in counting	42	28
written statement of, how made	43	29
to whom delivered by inspectors	44	30
defective ballots to be preserved	45	30
when ballots to be destroyed	45	30
when ballots to be preserved, sec. 2-7	32-34	
when ballots to be numbered, sec. 1	31	

county canvass:

when and by whom made	46	37
vacancies in board, how filled	47	37
absent returns to be sent for	47	37
returns, when amended	47	38
informal returns to be corrected	47	38
written statement of, how made, certified, etc.	48	38
written statement to be made in detail	48	38
tabular exhibits of votes cast to be made	48	38
determination of result, how made and published	49	39
county clerk to issue certificate of election	50	40
county, to make return to district canvassers when district is more than one county	51	40
county clerk to supply copy of county canvass to governor, secretary of state, and treasurer	52	40
and list of senators, assemblymen and county officers elected	52	40
votes on constitutional amendment, how canvassed and certified	53	41

district canvass:

by whom made	54	41
when and where to meet	55	42

ELECTIONS — (continued).*district canvass — (continued).*

	<i>Sec.</i>	<i>Page.</i>
absent returns to be sent for	56	42
informal returns to be completed ..	56	42
adjournment for correction of returns ..	56	42
to certify result of	56	42
statement of assembly and senatorial district canvass, how made and filed	57	43

miscellaneous provisions:

civil process not to be served on day of	74	43
sale of liquor on day of, prohibited	1564	459
plurality to elect, informality not to defeat	75	43
officers of, their compensation	76	44
no election or return invalidated by failure to use blanks ..	78	44
any person voted for may file notice of contest	5	33

special:

to fill vacancies, when may be held	79	45
notice to be given	80	45
in what cases may be held	81	46
how ordered by sheriff	82	46
how notified; when ordered by governor	83	47
conducted as general	84	47

judicial elections:

of justices of supreme court, when held	86, 87	48
of circuit and county judges, when held and how notified ..	86, 87	48
to fill vacancies, when held and how notified	88, 89	48
how held and conducted	89	48

municipal elections:

of town officers, at town meetings	782	124
canvass of votes therein	802	132

penalties:

for illegal voting	4548	49
for false registration	4543	49
on canvassers for false returns	4544	50
on inspectors for violation of duty	4545	50
for deceiving ignorant elector	4546	51
for parading militia election day	4547	51
for tampering with ballot box	4548	52
penalty for attempt to influence voter by threat	4480	53
bulldozing or intimidating voter	4480a	53

ELECTORS —

who are qualified	1-12	5-6
civilized descendants of the Lake Superior Chippewa Indians	1	54
where to vote	13	7
ten or more may file notice of contest	6	33
registration of, where to be made	20	10
by whom and how made	21	11
when registered on written application	23	12-13
names of, to be checked on registry list	24	15-17
not registered, how to vote	24	17
vote of person, under guardianship of insane, rejected ..	39	27
to state full name when voting	34	22
challenge of	35, 36	22-25
rules of determining residence of	37	25-26
liable to serve as jurors	2524	490
bribery of, to vote, how punished	4478	52
same in nominating convention, how punished	4479	53

EMINENT DOMAIN —

in taking land for town highway	1265	290
for county road	1300	331
for state road	1312	340

		Sec.	Page.
EMINENT DOMAIN—(continued).			
overseers may enter lands to take material for repair of			
highway.....	1236	268	
compensation, how appraised.....	1237	269	
ENCROACHMENT —			
town board, to order removal.....	1330	348	
order to be served.....	1331	349	
forfeiture for failure to remove.....	1331	349	
if denied, jury to inquire; how called.....	1332	349	
jury to be sworn and inquire.....	1333	350	
if jury find, to certify.....	1334	350	
occupant then to remove it.....	1334	351	
costs to be paid by encroacher.....	1335	351	
if none, costs payable by town.....	1336	352	
appeals, how made.....	1336	352	
EQUALIZATION OF TAXES —			
by county board.....	1073	226	
by board of review.....	1060	221	
ESTRAYS —			
(See STRAYS.)			
proceedings on taking up.....	1603-1613	469-472	
EVIDENCE —			
<i>oaths and affidavits:</i>			
before whom taken.....	4080	502	
<i>public records and documents:</i>			
when presumptive evidence.....	4149	503	
stub book of treasurer of payment of taxes.....	1096	240	
order laying highway, of regularity.....	1298	327	
order laying drain, of regularity.....	1338	336	
record of division fence.....	1403	404	
<i>certified copies, admissible when:</i>			
of public records and documents.....	4148	502	
seal, when required.....	4149	503	
signature and seal presumed genuine.....	4149	503	
of chattel mortgages.....	2318	488	
EXCISE —			
(See LICENSE.)			
EXEMPTION —			
of property from taxation.....	1038	208-210	
none on judgment for tax.....	1101-1103	243-245	
nor of lands on judgment for double cost of fence, when.....	1397	399	
of militia, from poll tax or jury (<i>note</i>).....	636	274	
from jury duty, to whom extends.....	2525	490	
EXTORTION —			
by officers, how punished.....	4550	496	
F.			
FAIR GROUNDS —			
road to.....	1299a	327	
how obtained.....	1299a	327-331	
FARM PRODUCTS —			
statistics of, assessors to collect.....	1010	201	
FATHER —			
when to support children.....	1502	430	
absconding, proceeding against.....	1506-1510	432-433	
of bastard, how compelled to support.....	1530-1542	442-443	
deserting children or wife, how punished. (<i>See Note</i>)....		432	

FEES—		Sec.	Page.
officer to post up schedule of	2954	500	
punishment for extortion	4550	496	
<i>of appraisers:</i>			
of damage done by cattle	1632	481	
<i>of clerks:</i>			
of town, etc., for taking the census	1003	193	
of registry and election	76	44	
<i>of commissioners:</i>			
on appeal from order laying highway, etc.	1280	311	
on appeal from order laying drain	1862	362	
<i>of county clerk:</i>			
for compiling census returns	1003	198	
<i>of county judge:</i>			
on appeal from order laying, etc., highway	1280	311	
same on appeal from award	1290	323	
of fence viewers	1402	404	
<i>of justices of the peace:</i>			
for appointing appraisers of damage done by cattle	1631	479	
for appraisal of stray	1610	470	
on highway appeal from order	1280	311	
on highway appeal from award	1290	323	
<i>of jurors:</i>			
on highway appeal from award	1290	323	
on removal of encroachments	1335	351	
of overseers of highways for levy, etc.	1257	284	
of town clerk	834	153	
<i>of town treasurer:</i>			
for collection of taxes	840	158	
for return of delinquent taxes	840	158	
for moneys received for sale of cattle	1636	483	
<i>of witnesses:</i>			
on removal of encroachments	1335	351	
(See COMPENSATION.)			
FENCES—			
encroaching highway, to be removed	1337	352	
removal of, when road laid	1284	316	
removal not required between April and November	1284	317	
who to be viewers of	1389	389	
what deemed legal and sufficient	1390 & 1390a	389-390	
on swamp lands, how made	1390	389	
<i>partition:</i>			
how to be maintained	1391	390	
how agreed to	1392	391	
to be maintained while lands inclosed	1392	391	
who to own fence built before boundary line established	1392a	392	
when such fence to be removed	1392a	392	
who may remove	1392a	392	
division of, by viewers, to be made in what cases	1393	393-396	
proceedings therefor	1393	393-396	
if one party, ordered, fail to build, other may, and re-			
cover double expense	1393	396	
in water, how made, divided	1394	396	
how, when boundary a river	1395	396-398	
maintaining of, how ordered; proceedings by viewers	1396	398	
one occupant, failing to build, other may, and recover			
double cost	1397	399	
one having built more than share, how divided, and other			
required to pay, etc.	1398	401	
share and value, now determined	1398	401	
when uninclosed lands shall be inclosed, cost of partition			
fences previously built, how determined	1399	402	

FENCES—(continued).	<i>Sec.</i>	<i>Page.</i>
fence viewers to divide, value, and order share paid.....	1399	402
occupant may open inclosure, on notice; other than to		
main'tain; may purchase, how.....	1400	403
on town line, viewers to be chosen from each town	1401	404
fees of viewers; how paid, &c	1402	404
record of division, evidence.....	1403	404
FENCE VIEWERS—		
overseer of highways to be	1389	389
may order building, repairs, etc., of partition fence, 1393-1396	393-399	
when to divide and value on inclosure of lands	1399	402
when on opening inclosure.....	1400	403
to be chosen from both towns when fence on town line ..	1401	404
compensation; penalty for neglect	1402	404
FILING—		
of chattel mortgages.....	2314	487
FIXTURE—		
highway not to be laid through, when.....	1263	289
FLAX SEED—		
fifty-six pounds a bushel	1665	485
FORFEITURES—		
chairman and other town officers to sue for what forfeit-		
ures	3304	493
to notify district attorney, when.....	3305	493
town treasurers, etc., to collect of justices	3307	494
treasurers to pay to county treasurer and file statement		
with clerk	3308	494
penalty for neglect to pay.....	3309	494
who liable for costs	3313	495
FOR WHAT ACTS, ETC., IMPOSED.		
<i>on officers:</i>		
for neglecting duty in taking census, etc.....	1001	198
for permitting slaughter-house to be used contrary to law	1418	408
for not making complaint for unlawful liquor selling....	1553, 1568	453-461
for not posting fee bill	2954	500
assessor or supervisor, for refusing to assess relatively in		
joint school-district	471	79
assessors, etc., for refusal to furnish statistics.....	1019	204
commissioners in road appeal, for refusal to serve.....	1279	309
town or county officers, making printing contracts in		
which they are interested.....	1134	253
county treasurer, for receiving unverified returns.....	1114	250
county or town treasurer, for dealing in orders	1092	238
fence viewer, for refusing to serve.....	1402	404
juror, for refusal to serve in road appeal	1287	319
overseer of highway, for refusal to perform duty	1231	267
or for not making return of unpaid taxes.....	1259	285
sealer of weights and measures, for neglect of duty.....	1663	484
constables and sheriffs for not prosecuting for sale of		
liquor to Indians.....	1568	461
town board, for issuing unauthorized orders.....	823	143
town chairman, for not erecting guide board.....	1247	264
town clerk, for not reporting as to schools, etc.....	499	93
town officer, for failure to serve or give bond.....	812	136
or for disobeying decision of state superintendent	504	93
town treasurer, for not filing statement of moneys received	839	158
or for not verifying return of delinquent taxes.....	1114	250

FORFEITURES—(continued).

Sec. Page.

on persons, generally:

for neglect of duty to schools.....	500	93
for refusal to answer questions as to census.....	1000	198
for defacing or injuring guide board.....	1228	264
for fast driving over bridge.....	1323, 1324	345
for obstructing highway.....	1326	347
for not removing fallen trees.....	1338	347
for not removing encroachment.....	1331, 1334	349-351
for cutting down shade trees on highway.....	1345	357
for injuring sidewalks in towns.....	1346a	358
for obstructing drain.....	1383	384
for not removing obstruction therefrom.....	1384	384
for neglect to remove nuisance.....	1414	406
for keeping a slaughter-house on bank of stream, etc., or throwing dead animal in stream.....	1418	408
for using recorded mark or brand of another.....	1468	417
for altering or destroying mark or brand.....	1468	417
for allowing obnoxious or infected animals to go at large.....	1482-1491	421-426
for bringing pauper into state.....	1515	436
for selling liquor when prohibited.....	1555	454
for selling at other than standard weight.....	1670	485
for benefit of town, board to prosecute.....	819	140

FORMS (STATUTORY)—

of affidavit of assessor to roll.....	1063	223
<i>of bond:</i>		
justice of the peace.....	846	162
of constable.....	841	159
of town clerk.....	830	149
of indorsement of authority to collect highway taxes.....	1254	284
<i>of oaths of:</i>		
voter challenged.....	38	26
of order extending time for payment of taxes.....	1108	247
of return of delinquent taxes.....	1118	249
<i>of warrant:</i>		
for collection of highway taxes.....	1241	275
with tax roll of town clerk.....	1081	232
<i>of wild animals:</i>		
proof of killing, subd. 2.....	1630a	476
of chairman's certificate, subd. 2.....	1630a	476
of statement in record by county clerk, subd. 3.....	1631a	477
road overseer's affidavit.....	1252	282

FRAUDULENT CONVEYANCES—

chattel mortgages invalid against third parties unless filed.....	2313	487
when and how to be filed.....	2314	487
cease to be valid after two years unless affidavit filed.....	2315	488
effect of affidavit.....	2316	488
contract of conditional sale, when void unless filed.....	2317	488
certified copy of chattel mortgage evidence.....	2318	488

FREE HIGH SCHOOLS—

how established.....	490	69
vote to establish, how taken.....	490	90
adjoining towns may unite in establishing.....	491	90
officers of, how chosen.....	492	91
tax to support, how levied.....	495	92
moneys raised for, how paid out.....	495	92

FUEL—

for family, exempt from taxes.....	1038	209
------------------------------------	------	-----

	<i>Sec.</i>	<i>Page.</i>
FUNDS —		
<i>drainage:</i>		
how apportioned.....	254-257	55-56
<i>school</i> (see SCHOOL FUNDS).		
<i>trust</i> (see TRUST FUNDS).		
FURNITURE —		
kitchen, exempt from taxation	1088	209
G.		
GAMING OR GAMBLING —		
persons interested in election bet disqualified as voters.	12	7
GARDEN —		
highway not to be laid through.....	1268	289
GLANDERS —		
owners of infected animals liable to damages.....	1491	426
GOATS —		
how restrained from running at large.....	1482	421
GOODS —		
mortgage of, where filed	2314	487
mortgage of, when ceases to be valid.....	2315	488
merchants', where assessed for tax.....	1040	211
GRAIN —		
standard weight of	1665	484
penalty for selling, except by standard weight	1670	485
GRASS —		
town supervisors may lease swamp land for cutting.....	257	56
GRAVE STONES —		
erection of, in cemeteries, how regulated.....	1453	414
GRAVEL —		
overseer may enter lands, and dig, for improvement of highway	1236	268
compensation therefor, how made	1237	269
may be taken from one street to improve another. See note B.....	1236	269
GRAVEL ROAD OR TURNPIKE —		
abandoned, deemed highway.....	1293	324
GROWING CROPS —		
exempt from taxation	1088	209
GUIDE BOARDS AND POSTS —		
chairman of town board to erect.	1227	264
penalty for neglect to erect.....	1227	264
penalty for defacing, who to prosecute.....	1228	264

H.

HAWKERS AND PEDDLERS —		
when required to obtain local license	1584a	463
(See PEDDLERS.)		
HEALTH —		
boards of; measures to preserve public.....	1411	405
officer; board of may appoint.....	1412	405-9
duties of		410
health officer to report to state board of health.....		410
(See BOARDS OF HEALTH.)		

H EMP SEED —	Sec.	Page.
44 pounds a bushel.....	1665	484

HIGH SCHOOLS— (See FREE HIGH SCHOOLS.)

HIGHWAYS AND BRIDGES —

supervisors of towns to have care of.....	1223	258
their duties; to direct repairs, remove obstructions, etc....	1223	258-60
to perfect description and record of roads.....	1223	258
to erect bridges.....	1223	258-9
to divide town into road districts.....	1223	259
to assign inhabitants to districts.....	1223	260
to require overseers to perform duty.....	1223	260
to assess highway taxes.....	1223	260
to lay out, etc., highways.....	1223	260
in two or more towns, how laid out.....	1300	331
in villages, streets and alleys, how declared highways....	1224	260
taxes raised in money, how expended on.....	1225, 1225a	260-2
taxes for, statement of, to board of audit.....	1226	263
statement to show how assessed, collected, expended, etc....	1226	263
and estimate for ensuing year.....	1226	263
steam engines on, ch. 175, Laws '85.....		263-4
<i>guide boards:</i>		
chairman to erect.....	1227	264
penalty for neglect to erect.....	1227	264
penalty for defacing; who to prosecute.....	1228	264

OVERSEER OF HIGHWAYS.

on failure to elect, town supervisors to appoint.....	1230	265
to give bond.....	1230	265-6
to be provided account book.....	1230	265-6
to keep account.....	1230	266
to file account book with town clerk.....	1230	267
town supervisors may remove overseer.....	1231	267
penalty on overseer for neglect.....	1231	267
<i>duties of overseers:</i>		
to keep in repair roads in districts.....	1232	267-8
to notify to pay taxes; and where to labor, etc.....	1232	267
to collect highway taxes.....	1232	268
to make immediate repairs, when.....	1233	268
to give credit for payment in excess of tax.....	1234	268
may procure plow, scraper, etc.....	1235	268
may enter lands, construct drains and ditches.....	1236	268-9
may enter unimproved lands, dig sand, etc.....	1236	268-9
may cut trees, dig stones, etc., for highways.....	1236	269
owner may appeal.....	1237a	271
owner, how compensated in such cases.....	1237	269
to make list of taxpayers in district.....	1238	272
penalty on, for neglect.....	1238	272

ASSESSMENT AND COLLECTION OF HIGHWAY TAXES.

town may vote to collect in money.....	776	119
town supervisors, when to meet and assess.....	1239	273
to make out list; polls, personalty and realty of each district.....	1239	273
how to proceed in assessment of.....	1240	274
who liable for or exempt from poll tax.....	1240	274
limits of percentage of tax.....	1240	275
limits of, as to population.....	1240	275
limits of, as to size of town.....	1240	275
town clerk to make duplicate of lists.....	1241	275

HIGHWAYS AND BRIDGES — (continued).

ASSESSMENT AND COLLECTION OF HIGHWAY TAXES

—continued).

	<i>Sec.</i>	<i>Page.</i>
town supervisor to issue warrant; form.....	1241	275
overseer to add omitted names to list.....	1242	275
<i>sidewalks:</i>		
when part of tax expended on.....	1243	276
shade trees, when part of tax expended for.....	1243	276
<i>additional tax:</i>		
overseer may assess, when.....	1244	276
supervisors may assess additional.....	1225a	262

COLLECTION AND APPLICATION OF HIGHWAY TAXES.

town treasurer to pay overseer district moneys	1245	278
supervisors may order amount paid over expended by contract	1245	279
<i>two-thirds:</i>		
of tax to be expended by July first.....	1246	279
overseer to give notice to pay or work out tax.....	1247	279
may require payers to furnish team or tools.....	1247	280
tax payable in labor, work, etc., how credited.....	1248	280
<i>snow drifts:</i>		
overseer to clear from roads, etc	1249	280
may notify taxpayers to assist.....	1249	280
and credit work on tax list	1249	281
<i>track through field:</i>		
may be opened when.....	1249	281
overseer may levy tax to clear out drifts.....	1250	281
payer neglecting to work tax, to pay money	1251	281
overseer to collect tax in money, when.....	1252	282
to levy by distress and sale, when and how	1252	282
when may sue for.....	1252	283
overseer to deputize constable and collect.....	1253	283
by list, and indorsement of authority.....	1254	284
constable's duty; reissue of warrant.....	1255	284
how moneys to be expended.....	1256	284
fee of overseer	1257	284
compensation for services in excess of his tax	1258	284
<i>return of unpaid taxes:</i>		
when to be made.....	1259	285
penalty for neglect to return	1259	285
town clerk may issue warrant to compel return	1259	286
proceedings on warrant	1259	286
town clerk to enter unpaid taxes in tax roll.....	1260	287
<i>accounts of overseers:</i>		
when rendered.....	1261	287
what to contain.....	1261	288-289
overseer to pay over moneys in hand to treasurer	1262	289
treasurer to sue for, if he neglect.....	1262	289

HIGHWAYS, HOW LAID OUT, ALTERED, WIDENED OR DISCONTINUED.

when not to be laid through orchard, yard, building, cemetery, etc.....	1263	289
penalty for laying through cemetery (<i>note</i>).....	4593	289
<i>width of:</i>		
not less than four rods, when may be but three.....	1264	289
<i>application for:</i>		
how made	1265	290
supervisor not to act, when interested	1266	290
<i>notice to meet and decide:</i>		
how made and served.....	1267	291
supervisors to meet, view and decide	1268	293
may adjourn meeting, how.....	1269	293

HIGHWAYS AND BRIDGES—(continued).

HIGHWAYS, HOW LAID OUT, ETC.—(continued).

<i>order and survey:</i>	<i>Sec.</i>	<i>Page.</i>
how made, filed, etc.	1269	293-294
no order filed in ten days, deemed adverse decision	1269	294
<i>damages:</i>		
how ascertained	1270	295-297
if by agreement, how executed	1270	296
agreement to preclude owner from	1270	296
award of, how made, signed and filed	1270	296-297
estimate of damages, benefits to be considered	1271	297
road discontinued to offset road laid, how far	1271	297
<i>on town lines:</i>		
supervisors to act jointly	1272	297
application to be in duplicate, by residents of each town	1273	297
proceedings on, record, etc., to be filed, etc., in each town	1273	301
<i>between town and village, or city:</i>		
village or city to appoint commissioners to act with supervisors	1274	301
proceedings and record in such case	1274	302
to fair grounds and cemeteries, how obtained	1299a	327-331
<i>road to real estate (private):</i>		
how laid	1275	302-5
application for, when right of way not obtainable	1275	303
procedure on application	1275	303
damage to be paid by applicant into treasury	1275	305
appals from order laying, etc., how taken	1276	305-307
may be to justice in same or adjoining town	1276	305
or to county judge, in first instance	1276	305
application, what to state	1276	306
appellant to give bond	1277	307
notice of time and place to appoint commissioners, how made and served	1277	308
removal of matter to nearest justice, how made	1278	308-309
selection of commissioners, how made	1279	309-310
warrant to commissioners, how issued	1279	309-310
vacancies in commission, how filled	1279	311
commissioners to be sworn	1280	312
to meet, view, hear and decide	1280	312
decision to be in writing, signed and filed	1280	312
compensation of officers, how paid	1280	313
party appealing to pay costs, when	1280	313
<i>second appeal:</i>		
when first to justice, party aggrieved may take, to county judge	1281	313
like proceedings to be had on same	1281	314
notice of, to be given to first appellant	1281	314
supervisors to proceed on reversal, how	1282	315
determination of supervisors, not appealed from, final for one year	1283	316
refusal of commissioners final for one year	1283	316
<i>opening of:</i>		
owner to be notified to remove fences	1284	316
removal of fences not required between April 1st and November 1st	1284	317
owner neglecting, supervisors to remove	1284	317
not to be opened pending appeal	1284	317
<i>appeal from award of damages:</i>		
how taken	1285	317-319
to justice of same or adjoining town, or county	1285	317
application for, how made	1285	317
notice of, how given	1285	318

HIGHWAYS AND BRIDGES—(continued).

HIGHWAYS, HOW LAID OUT, ETC.—(continued).	Sec.	Page.
appellant to give bond for costs.....	1286	319
jury, how selected, talesman called, etc.....	1287	319
penalty on jury for refusal to serve.....	1287	320
appraisal of jury, how made.....	1288	321
cost payable by appellant, if damages not raised.....	1288	321
by town, etc., if appraisal exceed award.....	1288	321
<i>second appeal:</i>		
when first to justice, may be taken to county judge.....	1289	322
like proceedings thereon.....	1289	322
<i>costs:</i>		
final award exceeding appraisal, town, etc., to pay.....	1290	323
otherwise, the appellant.....	1290	323
<i>payment of damages:</i>		
how made.....	1291	323
when town to vote upon.....	1291	324
not payable till road opened.....	1291	324
town orders for, how paid.....	1291	324
non-recorded roads may be discontinued.....	1292	324
turnpike, abandoned, deemed highway.....	1293	324-325
plankroad, or gravel road, also.....	1293	324
presumption as to width of.....	1294	325
highways not used four years, not to be.....	1294	325
not recorded, ten years' use and working to legalize—ex- ceptions.....	1294	325
where abandoned and how revert.....	1294a	326
certain private roads, not deemed.....	1294	325
laid out, three years' use and work to cure defects in record.....	1295	326
on discontinuance, lands, how revert.....	1296	326
papers relating to, to be filed with clerk.....	1297	326
records presumptive evidence.....	1298	327
oaths in proceedings, officers may administer and certify.....	1299	327
to fair grounds and cemeteries, how obtained.....	1299a	327-331

COUNTY ROADS.

county board may lay out, through or into two or more towns.....	1300	331
or widen or discontinue state roads.....	1300	332
petition for, who may make.....	1300	332
committee may act for board.....	1300	332
may adopt to town road.....	1300	332
may lay road in one town, when.....	1300	332
notice, how given.....	1301	333
board or committee may act.....	1302	333
committee to report to board.....	1302	334
order and survey, how made.....	1302	335
party aggrieved may appeal.....	1302	335
damages, how ascertained.....	1303	335
agreement for, how executed.....	1303	335
county board, or committee, to assess.....	1303	335-336
agreement or assessment filed in each town.....	1303	336
each town liable for damages in.....	1303	336
appeal and second appeal may be taken from award.....	1304	337
if damages more than \$1,500, road not to be opened until voted on.....	1304	337
each town liable for damages in.....	1304	337
county board may lay town road, when.....	1305	337
compensation for services.....	1306	338
opening of, and repairs, how made.....	1307	338

HIGHWAYS AND BRIDGES—(continued).

COUNTY ROADS—(continued).

Sec. Page.

county board may adopt main traveled; may keep same in repair.....	1308	338
county road tax, board may levy	1308	338
how same expended.....	1309	338
county road commissioner, board may appoint.....	1309	338
claims for work on, how paid.....	1309	338
board may cause road to revert to town, etc.; town, etc., then to keep in repair.....	1310	339
town refusing, county board to repair; expense chargeable to town.....	1311	339

STATE ROADS.

town supervisors not to alter or discontinue.....	1265	290
to be surveyed and established in two years.....	1312	340
commissioners; how to give notice.....	1318	340-341
how to make return.....	1314	341
damages to be paid by counties.....	1315	341
county board may alter or discontinue, when.....	1300	331
to be opened and worked as town roads.....	1316	341
compensation of commissioners, etc., paid by counties...	1317	341
recorded, and used three years, to be legal.....	1295	326

BRIDGES.

town board may levy tax for.....	1318	342
limit as to amount	1318	342
county board may levy bridge tax.....	1319	342-343
how collected and expended.....	1319	348
<i>on meddlered stream:</i>		
county, town, etc., may levy tax to build.....	1320	343
tax limited.....	1320	343
vote first to be taken to levy.....	1321	344
bonds for, how issued.....	1322	344
<i>fast driving on:</i>		
how prohibited and punished.....	1323	344
how, on free	1324	345
penalty for injury, treble damages and fine	1325	345
maintaining swing bridges between city and town.....	1325a	345-6
bridges over boundary streams	1325b	346-7

OBSTRUCTIONS.

forfeiture for placing.....	1326	347
overseer to remove	1326	347
treble damages for, in what cases.....	1327	347
trees fallen in, to be removed.....	1328	347-8
damages to owner for cutting trees on highway.....	1329	348
propelling steam engine on highway.....	1	263-4

ENCROACHMENTS.

town board to order removed.....	1330	348-9
order to be served.....	1331	349
forfeiture for failure to remove.....	1331	349
if denied, jury to inquire; how called.....	1332	349
jury to be sworn, and to inquire, etc.....	1333	350
if jury find to certify.....	1334	350-1
occupant then to remove it.....	1334	351
costs to be paid by encroacher	1335	351
if none, costs payable by town.....	1336	352
either party may appeal.....	1336	353

HIGHWAYS AND BRIDGES—(continued).

MISCELLANEOUS.		Sec.	Page.
removal of fences, when to be made.....	1837	352	
<i>town refusing to repair:</i>			
appeal lies to county board	1338	352	
appeal, how made and heard	1338	352	
repairs ordered, how made and paid for.....	1338	352-353	
<i>damages for insufficient:</i>			
town, etc., liable for.....	1339	353	
county liable for, on roads adopted.....	1339	353	
two towns, when liable.....	1339	353	
no liability, unless notice given.....	1339	353	
amount of recovery limited.....	1339a	355	
neglectful overseer liable for	1340	355	
neglectful road commissioner liable for, when	1340	355	
<i>trees in:</i>			
property of adjacent owner.....	1341	355	
shade trees along, may be set out.....	1342	356	
treble damages for cutting down.....	1342	356	
hedges and live fences along	1343	356	
protection fences may be made.....	1343	356	
shade trees on, when bounty allowed for.....	1344	356	
penalty for injuring, etc.....	1345	357	
tunnels may be constructed under, how.....	1346	358	
sidewalks along, may be built.....	1346a	358	
penalty for injuring.....	1346a	358	
general law to apply, when no special.....	1347	358	
watering places in public.....	1325a	358-359	
HIGHWAY COMMISSIONERS—			
towns may elect, when tax raised in money.....	1347	260-262	
HOGS—			
penalty for bringing diseased into state.....	1492	426	
HOLIDAYS—			
what days declared to be	2577	499	
falling on Sunday, succeeding Monday to be.....	2577	499	
HOMESTEADS—			
<i>under laws of United States:</i>			
improvements on, assessed as personality	1037	207	
applicants for, may petition for laying out, etc., of highways.....	1265	290	
HOME OF THE FRIENDLESS—			
exempt from taxation.....	1038	208	
HOP BOXES—			
standard size of, declared.....	1669	435	
HORSES—			
how may be taken up as strays.....	1608	469	
diseased, penalty for permitting to run at large	1482	421	
HOUSEHOLD FURNITURE—			
for kitchen, exempt from taxation.....	1038	209	
HUNDRED WEIGHT—			
to be understood one hundred pounds avoirdupois....	1667	485	
Hungarian grass seed 48 lbs. a bushel.....	1665	485	

I.

IDIOTS—			
statistics of, to be collected.....	1014	203	
Industrial School for Boys	4968	503	

ILLEGITIMATE CHILD—(See **BASTARDS.**)**IMPOUNDING OF ANIMALS—**

	<i>Sec.</i>	<i>Page.</i>
running at large, by towns	776	116
doing damage	1631-1636	479-483

IMPROVEMENTS—

on homestead entries, assessed as personalty	1087	207
<i>public:</i>		
municipalities may issue bonds, for what.....	942	180

INCLOSURE—

highway not to be laid through, when.....	1263	289
adjoining; fences, how kept up.....	1391	390
(See FENCES).....	1389-1403	387-404

INCOME—

distribution of school fund	554-560	101-105
-----------------------------------	---------	---------

INDIANS—

when electors.....	12	6
may become voters, upon what conditions.....	1	54
oath to be filed.....	2	54
not citizens, property not taxed	1038	208
sale of intoxicating liquors to, prohibited	1567	461
found intoxicated, how dealt with.....	1569	461

INDIAN CORN—

shelled, fifty-six pounds a bushel	1665	484
unshelled, seventy pounds.....	1665	484

INFECTIOUS DISEASES—(See **ANIMALS**)**INSANE PERSONS—**

not electors	2	6
votes of, to be rejected	39	27
statistics of, to be collected	1014	203
exempt from poll tax	1240	274-5
county judge to order poor confined and cared for, when.....	1528	440

INSPECTORS—*of elections:*

who constitute in towns.....	25	17
how appointed in division of towns into election districts.....	27	19
qualifications of.....	26	18
vacancies in, how filled	26	18
to take oath.....	28	20

powers and duties:

shall number the ballot of challenged voter on back, ch. 464		
Laws '85.....	31-32	
as board of registry	21-25	11-18
may administer oaths	25	18
to notify elections	19	10
to open ballot box-s before opening polls.....	31	21
to check names on registry list	24	14
to challenge voters.....	35, 36	22-25
in canvassing votes	42, 43	28-29
chairman to deliver written statement of canvass to municipal clerk	44	30
also to county cl-rk, how.....	44	30
at town meetings, supervisors to be.....	791	128
and take oath	794	130
shall seal up all ballots cast, sec. 2, ch. 464, Laws '85.....		32
ballots thus sealed to be returned as part of their election returns, sec. 2, ch. 464, Laws '85.....		32
inspectors or committee to recount when, sec. 6, ch. 464, Laws '85.....		33-34

INSPECTORS—(continued).

<i>compensation:</i>	<i>Sec.</i>	<i>Page.</i>
how fixed and paid.	76	44
at town meeting.	850	164
<i>penalties:</i>		
for fraud; false statement, neglect, etc.	4544, 4545	50

INTOXICATION—

how punished.	1561	458
--------------------	------	-----

INTOXICATING LIQUORS—

sale of, licensed and regulated.	1548-1565	444-460
(See LICENSE.)		

INVENTORY—

of absconding relative.	1507	432
------------------------------	------	-----

J.

JOINT SCHOOL DISTRICTS—

how formed or altered.	415	67
taxes in, how assessed.	471	79
loans to, from trust fund, how made and paid.	263	57
(See SCHOOL DISTRICTS.) (See TRUST FUNDS)		

JOURNAL OF EDUCATION—

district boards, etc., may subscribe for.	508	94
------------------------------------------------	-----	----

JUDGES OF COURTS OF RECORD—

elections of.	86-89	48-9
may administer oaths.	4080	502

JUDGMENTS—

against town, how collected.	781	123
against town, how collected.	4	272

JUDICIAL ELECTION—

when held; how conducted and canvassed, etc.	86-89	48-49
---------------------------------------------------	-------	-------

JURORS—

who liable to serve as.	2524	490
who exempt from serving.	2525	490
who to make and certify list.	2526	491
how selected in certain counties.	2529	491
who to be placed on list.	2530	492

JURY—

to assess damages in laying drains, how obtained; duties of.	1367	375-76
or determining obstruction.	1385	385
to assess damages on laying highway, how obtained; duties.	1287-1289	319-323
to determine encroachments, how obtained; duties.	1333-1336	349-352

JUSTICES OF THE PEACE—

election, qualification, etc.:

four to be elected in each town.	845	161
term; vacancies, how filled.	845	161-163
to be elected at annual town meeting.	808	134
on organization of new town, how elected.	814	136
and lots drawn for terms, and certified.	815	137
town board may temporarily appoint, when.	845	162
town clerk to notify clerk of circuit court of election.	832	150
to take oath and give bond; form.	846	163
may qualify after prescribed time.	847	163

JUSTICES OF THE PEACE—(continued).

<i>powers and duties of:</i>	<i>Sec.</i>	<i>Page.</i>
may administer oath.....	4080	502
may act on town board of audit, when.....	820	141
may act as county canvasser, when.....	46	87
to pay forfeitures collected to town treasurer.....	3307	494
to bring witnesses before board of review.....	1061	221
to deliver books and papers at expiration of term.....	3589	501
two may order removal of infected person, when.....	1416	407
<i>in special proceedings:</i>		
on appeal from order laying out highway.....	1276-1282	305-315
on appeal from order laying drain.....	1362	362-369
to appraise strays, etc.....	1610	470
on appraisal of damage done by cattle.....	1631	479-480
to appraise obnoxious animals, etc., taken up.....	1485	423
against absconding relatives; to assign property for support of poor, etc.....	1506, 1507	432-433
in bastardy proceedings.....	1530	442
on inquiry as to encroachment in highway.....	1332, 1333	349-350
on inquiry as to obstruction of drains.....	1385	385-386
to issue warrant for removal of nuisance.....	1415	406
<i>civil jurisdiction of:</i>		
of actions to collect personal tax.....	1101	243
proceedings therein.....	1101, 1102	244
<i>criminal jurisdiction:</i>		
proceedings on complaint for unlawful sale of intoxicating liquors.....	1551	452
when required to make complaint.....	1553	453
on sale thereof to Indians.....	1568	461
<i>compensation:</i>		
for appointing appraisers of damages by cattle.....	1631	479
for appraising stray.....	1610	470
on highway appeal.....	1280	311-313
appeals in cases of drains.....	1362	362-369
liability and penalty for refusal to deliver up books and papers at expiration of term.....	4553	497
JUSTICES OF THE SUPREME COURT—		
when and how elected.....	86-89	48-49

L.

LAND—

liable to taxation (see TAXES).....	1030-1087	205-236
how assessed and entered on roll.....	1045	213
when mortgaged to state.....	1046	214
overseer of highways may dig drains and get gravel, etc., on.....	1286	268
damage therefor, how appraised.....	1237	269
damage for laying roads through.....	1263-1316	289-341
to revert on discontinuance of highway.....	1296	326
damages for laying drains through.....	1359 et seq.	360-388
how taken for public use (see EMINENT DOMAIN).		

LAND MARKS—

towns may vote to erect, when.....	776	119
duty of town board, when erection of, ordered.....	825	145-146
manner of erection.....	825	145
to be set on corner, as per U. S. survey.....	825	146
duty of surveyor in setting; survey to be recorded.....	826	146
how located in highways.....	827	146-147
set, presumed to be an original corner.....	828	147
cost of setting to be paid by town; how elected.....	829	147
section corners how ordered re-established.....	829a	147-148
duties of town supervisors.....	829a	148

LANDS MORTGAGED TO STATE—	<i>Sec.</i>	<i>Page</i>
how assessed for taxation.....	1046	214
LAW OF THE ROAD.....	1591	468
LEASE—		
of land of infants for school-house site	484	86
of swamp lands.....	257	56
LEGAL SETTLEMENT—		
of pauper, how acquired.....	1500	428
town of, liable for paupers' support to town affording relief	1513	435
LIBRARIAN—		
<i>in towns:</i>		
elected at annual meeting.....	808	134
duties of.....	849	164
LIBRARIES—		
<i>school district:</i>		
adjoining districts may form joint.....	486	87
may be divided, sold or donated	486	87
<i>town:</i>		
may be established.....	776	117
librarian of, to give bond.....	848	164
by-laws of, etc.....	849	164
duties of librarian of.....	849	164
<i>free:</i>		
how established and regulated in towns, etc.....	931	177
tax for, how levied.....	931	177
directors of, how appointed; their duties.....	933	177
to be free	982	178
directors to report annually.....	935	179
may accept donations	936	179
<i>family:</i>		
exempt from taxation.....	1038	209
LICENSE—		
to shows, towns, etc., may grant.....	930	176
<i>to sell liquors:</i>		
to whom and how granted	1548	444
amount to be paid for.....	1548	444
proceedings to grant by town boards.....	1548	444
permits to registered pharmacists.....	1548a	446
amount to be paid for pharmacist's license	1548a	446
special elections to determine amount of.....	1548b	447
proceedings to call special election.....	1548b	447
form of ballot.....	1548b	448
when special election to be held.....	1548b	448
penalty for selling without	1550	450
penalty for making false statement by pharmacist ..	1550a	451
proceedings for revocation of	1558	455
when revoked, not renewable for one year.....	1559	457
moneys derived from, applied to support of poor.....	1562	459
right of action of person injured by	1560	458
married woman may bring action.....	1560	458
punishment for drunkenness	1561	458
<i>to peddlers; local to peddler, etc., when required</i>	1584a	463
how issued	1584b	464
LIENS—		
taxes to be, until paid, on land, logs etc.....	1088	237
work, labor, materials furnished town, etc., by sub-contractor entitles to lien.....	3323	500
LIME UNSLACKED—		
eighty pounds a bushel.....	1665	494

LOANS FROM TRUST FUNDS—(See TRUST FUND).

LIQUOR ^s —(See LICENSE).	<i>Sec. Page.</i>
regulation of sale of	1548-1563 444-460

LOGS—	
where assessed for taxation	1040 211
taxes a lien on, when cut after levy on lands of non-residents	1088 237

LOSSES—	
by defaulting officers, chargeable to towns, etc.	1157 255

LOST MONEY AND GOODS—	
finder to post notice, when value three dollars or more.	1614 472
to publish notice when value ten dollars or more.	1615 472
appraisal of, when required	1615 473
to be restored to owner on payment of costs, etc.	1616 373
unclaimed, one-half net value to go to town treasury.	1617 474
penalty on finder for neglect to give notice.	1618 474

LOTS—	
in cemetery, inalienable after interment therein.	1455 415
justices in new towns to draw, etc.	814 136
drawing, how conducted.	815 137

M

MACHINERY—	
when assessed for taxation	1040 211

MAINTENANCE—	
of poor relations.	1502-1508 430-433
See note to section	1506 432

MALFEASANCE—	
<i>punishment on officers:</i>	
for being interested in public contract, e c.	4549 496
for making unauthorized contract.	4549 496
or false statement or entry	4549 496
for discounting claims against public, etc.	4550 496
or paying from wrong fund.	4550 496
or violation or neglect of duty.	4550 496
or extortion or oppression.	4550 496
for appointing deputy for reward.	4552 497
for refusal to deliver moneys, records, etc., to successor.	4553 497
for making false certificate.	4554 497

MALT—	
barley, 34 pounds a bushel.	1665 485

MARKS AND BRANDS—	
town clerk to record	1468 417
penalty for using or altering another's.	1468 417

MARRIED WOMAN—	
legal settlement of, follows husband's.	1500 428
may bring suit for damages against parties selling liquor to minor children or husband, when.	1560 453

MARSHES—	
town supervisors may lease for cutting hay, etc.	257 56

MEETINGS—	
annual town, when held.	782 124
special, how called.	788, 789 127
special, to vote on amount of liquor license	1548b 447

MERCHANTS' GOODS—	
where assessed for taxes.	1040 211

	<i>Sec.</i>	<i>Page.</i>
MESSENGERS—		
may be sent by county canvassers for returns.....	47	87
or by district canvassers.....	56	42
their compensation.....	76	44
MILEAGE—		
of constables, but one for same travel in same action....	843	160
MILLET SEED—		
50 pounds a bushel.....	1665	484
MINORS—		
legal settlement of, how determined.....	1500	428
when public charge, supervisors may bind as apprentices..	1511	433
sale of liquor to, a misdemeanor.....	1557	455
and for damages, action lies.....	1560	453
MISDEMEANOR—		
sale of intoxicating liquors without license.....	1550	450
sale of same to spendthrifts, when forbidden.....	1554	458
sale of same to minors.....	1557	455
sale of liquor on Sunday or election day.....	1564	459
MONEY—		
lost, finder to give notice, how.....	1614	472
MONUMENTS—		
soldiers', etc., may be erected, when.....	937	179
county boards may levy tax to build.....	670	109
offensive or dangerous, not to be erected in public cemetery land (See LANDMARKS).	1453	414
MORTGAGES—		
on household furniture void unless signed by wife.....	2318	487
deemed personal property, and so assessed for taxation...	1036	207
how valued for taxation.....	1055	219
(See CHATTEL MORTGAGES.)		
MOTHER—		
when required to support poor children.....	1502	480
MUNICIPALITIES—		
counties (see COUNTIES).		
towns (see TOWNS).		
villages (see VILLAGES).		
general provisions:		
authorities of, may license shows.....	930	176
may establish free libraries.....	931-936	177-179
towns, etc., may erect soldiers' monuments.....	937	179
towns, etc., may make temporary loans, when.....	941	180
orders of, on treasurers, not to be negotiable.....	941	180
towns, etc., may issue negotiable bonds to subscribe to stock of railroads.....	942	180
proposition to issue, to be first submitted to vote.....	943	181
railroad bonds not to issue, till when.....	943	181
when indebtedness incurred, municipal territory liable; change of limits not to release from tax; tax, how ap- portioned in such cases.....	944	181
proceedings of, on proposition to subscribe to railroad stock.....	945-947	182-185
proposition to aid accepted by vote, obligatory.....	948	185
subscription, how to be made.....	948	185
bonds, when to be delivered.....	948	185
may subscribe to capital stock of railroad company.....	949	186
how subscription to be paid.....	949	186
levy of tax therefor.....	950	186-187
may guaranty bonds of narrow gauge railroad.....	951	187
levy of tax to pay.....	952	188

MUNICIPALITIES — (continued.)

<i>general provision—(continued).</i>	<i>Sec.</i>	<i>Page.</i>
company to first fix rates of fare and freights; guaranty	953	188
subscribing for stock, etc., to be stockholders, etc.	954	188-189
time when aid voted to railroad has been earned, how		
fixed	955	189
time may be extended, how	956	189
forms of bonds of, and how executed	956	190
in election on issue of bonds, vote, how taken, etc.	957	190
sinking fund may be established	958	190
how invested	959	190-191
may issue new bonds to refund debt	960a	191-192
penalties on officers, for neglect of duty, etc	960	191
exchange of bonds and extension of payment	960b	192
<i>municipal indebtedness:</i>		
bonds of towns, how may issue	777	121
faith pledged to pay	778	122
of towns, how apportioned on division	672	111
statistics of, to be furnished, etc	1017	204

N.

NARROW GAUGE RAILROADS—

municipalities may issue bonds in aid of	942	180
may guaranty interest on bonds	951	187

NATIONAL BANKS—

stock, when assessed for taxation	1042	212
proceedings to assess same	1051	216

NEGOTIABLE PAPER —

town, etc., orders, not to be	941	180
-----------------------------------------	-----	-----

NON-RESIDENTS —

property of, where assessed	1040	211
poor, to be relieved at county charge, when	1512	435

NON-USER —

highway ceases after four years.	1294	325
------------------------------------------	------	-----

NOTARIES PUBLIC —

may administer oaths	4080	502
--------------------------------	------	-----

NOTICES —

of elections, meetings, etc.:

of general elections, how given by secretary of state	17	8
how by county clerks	18	9
how by town, etc., clerks	19	10
how by inspectors of election	19	10
notice of contest of election		33
of special elections, how given	83	47
to be published in official state paper	83	47
of judicial elections	86	48
of meeting to form school district	413	64
same in case of joint district	415	67
on alteration of school district	418	68
on establishment of free high school	490	89
of election to divide town	671	109
of first town meeting	786	126
of special town meeting	789	127
to town officers of their election	809	134
to justices at their election	814	136
of election to subscribe to railroad	946	183
of meeting to lay out highway on town line	1273	297
same, on line between town and city, etc	1274	301

NOTICES — (continued).	Sec. Page.
of meeting to act on county road.....	1301 333
of submission to electors to tax for bridge	1321 344
of meeting to act on town drain.....	1360 381
of special election to vote on amount of liquor license....	1548b 447
of sales, etc.:	
of obnoxious animals running at large.....	1487 424
of stray	1612 471
of animals distrained	1634 482
of appeals, etc.:	
from decision of town board	481 85
from commissioners to review order laying out highway..	1281 313
from verdict appraising damages on laying out highway..	1289 322
from decision of county board making county assessment	1077a 228
in legal proceedings, etc.:	
of action for damages by insufficient highway.....	1339 353
of damages under sec. 1237, R. S.....	1237a 271
miscellaneous provisions:	
of application to lay out highway	1287 291
of reversion of county road to town, etc.....	1310 339
of neglect to repair road in such case.....	1311 339
of location of state road	1313 340
of petition for county drain.....	1360 361
of receiving proposals for county drain.....	1379 383
of division of partition fence.....	1393 393
of taking up of obnoxious or infectious animals. 1483, 1484,	1490 422-3
of application to compel support of relations.	1502 430
of liability for support of pauper.....	1513 435
of finding of stray.....	1609 469
of finding of lost money or goods.....	1614, 1615 472-3
of distress of animals doing damage.....	1631 479
NOXIOUS WEEDS —	
spread of, how prevented.....	1481a 420-1
NUISANCES —	
town boards, etc., to be boards of health, when.....	1411 405
boards of health to examine into.....	1412 405
and may order removal	1414 406
punishment for violating order of board of health.....	4608 411
penalty for neglect to remove, when ordered.	1414 406
justice may issue warrant to cause to be removed.....	1415 406
slaughter-houses not to be built on streams, etc.....	1418 408
nor within certain limits near villages, etc.....	1418 409
how removed when so built	1418 409
places where liquor unlawfully sold, deemed to be.....	1563 459
cemetery grounds laid out in forbidden limits are deemed	1454 415

O.

OATHS —	
by whom administered.....	4080 503
official:	
of town officers, when taken; where filed.....	809 135
to be administered without fee.....	809 135
neglect to file, is refusal to serve.....	809 135
town chairman may administer.....	818a 140
town supervisors and commissioners may administer and	
certify.....	1299 327
OATS —	
thirty-two pounds a bushel.....	1665 494

OBNOXIOUS ANIMALS —		<i>Sec. Page.</i>	
penalty for letting run at large.....	1482	421-423	
how taken up, and owner notified.....	1493	422	
OBSTRUCTIONS —			
penalty for placing, in highways.....	1326	347	
overseer to remove.....	1326	347	
penalty for placing in drain.....	1383	384	
proceedings to remove.....	1384-1387	384-386	
OCCUPANT —			
lands, when assessed to.....	1043	212	
of enclosed lands, to keep up partition fences.....	1391	390	
of lands, to destroy noxious weeds.....	1491a	420-421	
to remove encroachments from highway.....	1330	348	
obstructions; trees fallen, etc., must remove.....	1328	347	
OFFICERS—			
<i>of counties (see COUNTY OFFICERS).</i>			
<i>of towns (see TOWNS).</i>			
<i>of school districts (see SCHOOLS).</i>			
vacancies, what events cause.....	962	194	
circuit judge may remove town officers.....	976	194-5	
<i>liabilities and penalties:</i>			
for obtaining office by bribery.....	4481	53	
for being interested in contract.....	4549	496	
for doing unauthorized acts.....	4549	496	
for false statement, returns, entry, etc.....	4549	496	
for discontinuing or "shaving" orders.....	4550	496	
for extortion or oppression.....	4550	496	
for appointing deputy for reward.....	4552	497	
for refusal to deliver books, papers, etc.....	4554	497	
ONIONS —			
fifty-seven pounds, a bushel.....	1665	484	
ORCHARDS—			
highways not to be laid through, when.....	1263	289	
ORDERS—			
<i>towns (see TOWN ORDERS).</i>			
<i>county (see COUNTY ORDERS).</i>			
town orders, etc., not negotiable.....	941	180	
town orders, not sueable until 30 days after demand.....	824a	144	
laying out highways (see HIGHWAYS).....	1269	293	
laying out drains (see DRAINS).			
OVERSEER OF HIGHWAYS—			
one to be elected for each road district.....	808	134	
by electors thereof, need not be by ballot.....	797	131	
if office vacant, town board to appoint.....	1229	265	
to give bond.....	1230	265	
to be provided account book, and keep and file accounts..	1230	266	
town board may remove.....	1231	267	
<i>duties of:</i>			
to keep in repair roads in district.....	1232	267-268	
to notify to pay taxes, when to labor, etc.....	1232	267	
to collect highway taxes.....	1232	268	
to make immediate repairs, when road impassable.....	1233	268	
to credit payment in excess of tax.....	1234	268	
to procure plow and scraper, when.....	1235	268	
may enter lands, cut trees, dig stones, etc.....	1236	268-269	
may enter adjoining district with consent, for materials,			
etc.....	1236	269	
to deliver list of taxpayers to town clerk.....	1238	272	
to collect and expend tax when.....	1245	278	
to give notice to work or pay tax.....	1247	279	

OVERSEER OF HIGHWAYS—(continued).

<i>duties of—(continued).</i>	<i>Sec.</i>	<i>Page.</i>
to credit work and teams on tax.	1248	280
to open roads blocked with snow.	1249	280
to open track through fields, when.	1249	281
may levy tax therefor.	1250	281
to collect in money, on refusal to work tax.	1251	281
to collect by levy, etc., and sale.	1252	282-283
may depute constable to collect.	1253	283
to apply moneys to repair roads.	1256	284
to make return of unpaid taxes; how compelled.	1259	285
to render annual account.	1261	287-289
to pay unexpended funds to treasurer.	1262	289
to remove obstructions.	1326	347
to accept public shade trees, when.	1344	356
to be fence viewers (see FENCES).	1339	339
<i>compensation:</i>		
for labor, etc.	1258	284
fees for levy on property, etc.	1257	284
as fence viewer, how paid.	1402	404
<i>liabilities and penalties:</i>		
penalty for neglect of duty.	1231	267
liability for failure to deliver list of taxpayers to clerk.	1238	272
liable for damages adjudged against town by his neglect.	1340	355

OWNER—

of dogs liable for damages.	1619-1622	475
of ram liable for damages.	1490	426
of stallion liable for damages.	1482	431
of bull liable for damages.	1482	431
of boar and billy goat.	1482	431
of sheep infected with foot rot liable to forfeiture.	1489	434
of animals infected with glanders or other diseases liable to damages (see ANIMALS).		
owner of hogs diseased may not move them from place to place.	1492	426

P.**PARSNIPS—**

forty-four pounds to a bushel.	1665	484
-------------------------------------	------	-----

PARKS AND PUBLIC MONUMENT GROUNDS—

exempt from taxation.	1038	210
----------------------------	------	-----

PAUPERS—

exempt from poll tax.	1240	274
support of, by towns and counties.	1499-1529	428-441
(See POOR).		

PEACHES, DRIED—

twenty-eight pounds a bushel.	1665	485
------------------------------------	------	-----

PEARS—

one hundred quarts, dry measure, a barrel.	1668	485
-------------------------------------------------	------	-----

PEDDLERS—

when required to obtain local license.	1584a	463
---------------------------------------------	-------	-----

PERSONAL PROPERTY—

how defined for purpose of taxation.	1036	207
how valued for taxation.	1055	219
homesteader's improvements taxed as.	1037	207
fraudulent conveyance of.	2313-2318	487-489

PHARMACISTS, REGISTERED—	<i>See. Page.</i>
must take license to sell liquors	1548a 446
PHYSICIANS—	
duties of	410
boards of health may appoint.	1412 405
fine for not reporting patient with cholera, small pox, etc.	411
PLANK-ROADS —	
abandoned, deemed highway	1293 324
PLATS —	
of towns, etc., county board may vacate	670 107
POLICE —	
towns may appoint, when	824b 144
POLLS OF ELECTIONS—	
(See ELECTIONS.)	
POISON —	
for wild animals	477
(See ANIMALS.)	
POLL LISTS—	
to be returned to county clerk	24 17
to be kept at election by clerk	84 22
(See ELECTIONS.)	
POLLING PLACES—	
where to be, in towns, etc	15, 16 7-8
(See ELECTIONS.)	
POLL TAX —	
who to pay; who exempt	1240 274-275
POOR—	
<i>town system:</i>	
towns to support, when	1499 428
legal settlement, how acquired	1500 428
supervisors to have care of, under town system	1501 430
what relatives shall maintain, if able	1502 430
such maintenance, how compelled	1503 431
county judge to require relatives to relieve, when	1503 431
relative ordered to support, neglecting, supervisors to bring action	1505 432
absconding parent or husband having family may be ar- rested	1506 432
when property seized to support	1507 432
proceeds thereof, how directed	1508 433
proceeds to apply to support	1509 433
on return of relative or security given, unsold property restored	1510 433
minors may be apprenticed, when	1511 433
non-residents to be relieved by town at county charge	1512 435
town of legal settlement liable to others giving support ..	1513 435
notice of liability, how given	1513 435
notice to remove to be given to proper town	1513 435
supervisors of proper town to remove	1514 436
<i>town system — (continued).</i>	
not removing, town liable, as long as public charge	1514 436
penalty for bringing pauper into town of this state	1515 436
judgment to require security to transport pauper out of state	1515 436
town board to make annual report	1516 437
county to support, not legally settled in towns	1517 437
<i>county system.</i>	1518-1519 437-441
liquor license moneys, applied to support	1562 459
<i>poor houses:</i>	
inmates of, with contagious disease, to be removed from .	1417 408

POSSESSION—	<i>Sec.</i>	<i>Page.</i>
for taxation, defined	1044	213
POTATOES—		
sixty pounds, a bushel	1665	484
one hundred quarts, dry measure, a barrel.....	1668	485
POUNDS—		
towns may establish	776	116
cattle doing damage to be put in	776	116
PRIVATE ROAD—		
public highway to be, how laid.....	1275	302
damages for, how assessed and paid.....	1275	302-305
PROCLAMATION—		
polls to be opened and closed by, at town meetings.....	796	130
PRODUCTS—		
of farm, statistics, how collected	1010	201
PROPERTY—		
taxation of (see TAXES).....	1080	205
what exempt from taxation	1038	208-10
PROPOSITION—		
for railroad aid by municipality; how made and voted on,	945	183
PROVISIONS—		
provided head of family exempt from taxation	1088	209
PUBLIC HEALTH --		
municipal board of, how constituted	1411	406
preservation of, measures for.....	1412	406
orders, regulations, etc., to be published	1413	407
removal of nuisances	1414, 1415	406-407
prevention of contagion.....	1416, 1417	407-408
slaughter-houses, where to be kept.....	1418	408
further provisions for protecting	409-411	
<i>offenses against:</i>		
how punished for violating orders of board of health.....	4608	411
(See NUISANCES.)		
PUBLIC LANDS—		
town boards may lease swamp lands	257	56
drains for, how laid out.....	1381	384
PUBLIC NOTICES—		
(See NOTICES.)		

Q.

QUORUM—		
of town board, any two supervisors.....	819	140

R.

RAILROAD CORPORATIONS—		
<i>aid:</i>		
by municipalities, how proposed, etc.....	945	183
municipalities to be stockholders, when.....	954	189
time when aid for subscription has been earned, how fixed,	955	189
<i>taxation of:</i>		
what property exempt	1088	209

	<i>Sec.</i>	<i>Page.</i>
RAM —		
penalty for suffering to go at large at certain seasons.....	1490	426
any person may take up.....	1490	426
owner to be notified thereof.....	1490	426
if owner unknown, notice to be filed with town clerk.....	1490	426
restored to owner on payment of forfeiture and costs.....	1490	426
owner of liable for damages caused by.....	1490	426
RAPE SEED —		
fifty pounds, a bushel.....	1665	484
REAL PROPERTY —		
what includes for purpose of taxation.....	1035	207
assessment of (see TAXES).....	1043	213
exemption from taxation.....	1038	208-210
RE-ASSESSMENT OF TAXES —		
when set aside, enjoined, etc.....	1087	235
of benefits in construction of drains where original assessment declared void.....		387
RECEIPTS —		
for taxes paid, how given.....	1095	239
RECORDS —		
of drains laid out, etc., evidence.....	1362	364
of highways, etc.....	1223	253-259
of partition fence, how kept.....	1392	391
of towns and town boards, how kept.....	832	150
punishment for making false entry in public.....	4549	496
REGISTER OF DEEDS —		
to act as county canvasser, when.....	46	37
REGISTRY OF VOTERS —		
when made.....	20	10
REGISTERS OF ELECTION —		
who constitute board of.....	20	11
REGISTRATION —		
of electors (see ELECTIONS).....	20-24	10-17
RELATIVES —		
who bound to support poor.....	1502	430
REMOVAL —		
of town officers, by circuit judge.....	976	194
of road overseer, by town board.....	1231	267
REMOVAL OF CAU-SE —		
in appeals from proceedings in laying out highways.....	1278	308
REPORTS —		
<i>penalty:</i>		
for neglect to make, by town clerk.....	499	93
failure of officers to make, not to affect apportionment of school moneys.....	556	103
making false official, e. c., how punished.....	4549	496
<i>by whom and when to be made:</i>		
directors of free libraries.....	935	179
town clerk, as to schools.....	463	75
town clerks, as to school officers.....	467	176-7
RESIDENCE —		
absence on U. S. or state business does not change.....	4	6
of elector, how determined.....	37	25
one year gives legal settlement.....	1500	428
RESIGNATION —		
of officers, how and to whom made.....	961	193
of town officers.....	817	138

RETURNS OF ELECTION —

(See ELECTIONS).

REVERTER—	<i>Sec</i>	<i>Page</i>
on discontinuance of highways to owner of adjoining lands	1296	826
REVOCATION —		
of license to sell liquors, proceedings for.....	1558	455
RIGHT OF WAY —		
how obtained by one person across lands of another; public highway to be laid; procedure.....	1275	803
RIVERS—		
slaughter-houses not to be built upon, when.....	1418	408-409
ROADS —		
presumed (in certain cases) to be sixty feet wide.....	1294	825
(See HIGHWAYS AND BRIDGES.)		
<i>state roads</i>	1312-1317	340-343
county board not to discontinue unless wholly in county.	1300	831
town supervisors not to alter or discontinue.....	1265	290
<i>county roads</i>	1300-1311	831-840
penalty for laying out road through cemetery (<i>note</i>).....	4593	289
ROAD COMMISSIONERS—		
county board may appoint.....	1309	833
RUTA-BAGAS —		
fifty-six pounds, a bushel.....	1665	484
RYE —		
fifty-six pounds, a bushel.....	1665	484

S.

SAFE —		
town board may purchase	834a	154
SAILORS AND SOLDIERS (U. S.)—		
not residents.....	5	6
SALE OF INTOXICATING LIQUORS—		
who authorized to license.....	1543	444
sums to be paid; term of license.....	1548	445
when town board must meet to act upon.....	1548	446
registered pharmacists may be licensed.....	1548a	446
pharmacists to keep record of sales.....	1548a	446
must file copy thereof with town clerk.....	1548a	447
<i>special elections:</i>		
to fix amount of license, when held and how called.....	1548b	447
how conducted.....	1548b	448
applicant for license to give bond.....	1549	449
conditions of bond; form of.....	1549	450
<i>without license:</i>		
a misdemeanor, penalty.....	1550	450
complaint and warrant thereon.....	1551	452
district attorney to prosecute.....	1552	453
what officers to make complaint.....	1553	453
penalty for officers neglecting or refusing to make complaint.....	1553	458
<i>misdemeanors:</i>		
making false statement to pharmacist, a.....	1550a	451
pharmacist neglecting or refusing to comply w th law, a:	1550a	451

SALE OF INTOXICATING LIQUORS—(continued).

<i>to spendthrift:</i>	<i>Sec.</i>	<i>Page.</i>
may be forbidden.....	1554	458
who may forbid.....	1554	458
and such prohibition renewed.....	1555	454
forfeiture on bond for violation.....	1555	454
violation, a misdemeanor, how punished.....	1556	454
<i>to minors:</i>		
a misdemeanor, penalty.....	1557	455
<i>revocation of license:</i>		
proceedings for; summons to be issued and served.....	1558	455
on failure to answer, license revoked, hearing, how had..	1559	457
not renewable for one year.....	1559	458
mother of minor may sue.....	1560	458
vender liable for damages from sale to minor or drunkard.	1560	458
wife of drunkard may sue.....	1560	458
drunkenness, how punished.....	1561	458
places where unlawfully sold, nuisances.....	1563	459
on Sunday or day of election, prohibited.....	1564	459
giving away of, or other shift, deemed selling.....	1565	460
<i>to Indians:</i>		
forbidden.....	1567	461
on Indian lands, forbidden.....	1567	460
sheriffs, constables to complain.....	1568	461
drunken Indians to be confined, and made to disclose where liquor was obtained.....	1569	461

SALOONS—

(See SALE OF INTOXICATING LIQUORS.)

SANITARY REGULATIONS.....1411 *et seq.* 405-412

SCHOOLS —

report of town clerk.....	467	75
liability of town clerk for neglect of duty.....	499	98

SCHOOL-DISTRICTS —

property of district charged with repayment of loan.....	263	57
<i>formation of:</i>		
power of town board as to.....	412	64
size, change of boundaries, etc.....	412	64
meeting therefor; notice, how given; where held.....	413	64-65
penalty on person directed to call meeting, for neglect....	500	98
reorganization, how effected where disorganized.....	414	66
joint, how formed or altered.....	415	67
when deemed organized.....	416	67
to be body corporate, and powers.....	417	67
boundaries and map of, to be recorded.....	477	76
<i>alteration of:</i>		
when not to be made....	412	64
how made.....	418	68
notice of alteration, how given.....	419	69
consent of district boards, when necessary.....	419	69
division of property on forming new district.....	420	70
proportion to be paid new district; how certified, collected and paid.....	421	71
partly in city or village, how altered, etc.....	423	72
neglecting to maintain school, to be attached to another..	423	72
how property then disposed of.....	424	72
appeals, etc., in such case.....	497	92
<i>officers of:</i>		
district board, how constituted.....	432	78
meetings of board, how called.....	432	78
vacancies in board, how filled.....	433	78

SCHOOL-DISTRICT —(continued).

<i>taxes:</i>	<i>Sec.</i>	<i>Page.</i>
assessed as other taxes.....	469	78
when value of real estate to be estimated by clerk.....	470	78
assessment of tax in joint district.....	471	79
statement of tax to be delivered to town clerk.....	472	80
how and by whom assessed.....	473	81
when town clerk to assess additional tax.....	437	73
<i>judgments against, how collected</i>	487-489	87-88
<i>appeals to state superintendent, etc.</i>	497	93
<i>women eligible to school offices.</i>	513	94
forfeiture on town officer for refusing to carry into effect decision of state superintendent.....	504	93

TOWNSHIP SYSTEM OF SCHOOLS.

each town to be a district, and each district a sub-district.	516	94
<i>secretary of board:</i>		
to make statements of moneys received and disbursed, etc.	534	94-95
statements and estimates to be submitted to vote of electors of town.....	535	95
<i>town clerk:</i>		
to assess sums voted for schools.....	538	95
and to make good any deficiency on failure to vote.....	539	95
<i>town treasurer:</i>		
to receive and pay out moneys on order of directors.....	540	96
<i>joint sub-district:</i>		
controlled by board of town where school house is located	547	96
cost of maintaining school therein, how apportioned.....	547	96
procedure when both towns have not adopted township system.....	548	97
taxes, how apportioned and collected.....	549	97
village districts, outlying territory exempt from township system.....	551	98
vote for township system, how taken.....	552	98
debts of district, how paid after adopting township system.....	553	100
may borrow money from trust funds.....	...	99
taxes legalized.....	...	100

SCHOOL-DISTRICT OFFICERS —

<i>district board:</i>		
officers to constitute.....	432	73
vacancies in, how filled.....	436	73

SCHOOL FUND INCOME —

how and when apportioned.....	554	101-103
not to be made to districts not maintaining schools five months in the year.....	554	101-103
nor to districts delinquent in reports, etc.....	554	101-103
state superintendent to certify apportionment to secretary of state, and give notice to county clerks and treasurers.....	555	103
secretary to immediately draw warrant payable to county treasurer.....	555	103
officer to be notified on failure to report to state superintendent.....	556	103
correction of apportionment.....	556	103
county treasurer to notify and pay town, etc., treasurer..	557	103
if not demanded by town treasurer, how disposed of.....	557	103-104
town clerk to apportion among districts, etc.....	558	104
how to apportion when district altered.....	558	104
moneys not received by district, how disposed of.....	559	104
town treasurer liable for, on bond.....	635	154

SCHOOL-HOUSE SITES —	<i>Sec.</i>	<i>Page.</i>
proceedings to locate, when owner refuses to sell.....	477	81
duties of town board in establishing.....	478	92
compensation to land owner, how awarded.....	479	83
money awarded, how paid or deposited ..	480	85
appeal from award, how taken and tried.....	481	85
to condemn but one acre	482	86
in joint district, how located.....	483	86
proceedings to locate on lands of infants	484	86
SEALER OF WEIGHTS AND MEASURES.....	1663	484
SECTIONS —		
corners, how established for the erection of land marks..	826	146
how located and marked in highways.....	827	146
how re-established.....	829a	147-148
SEIZURES—		
of liquors kept f. r sale to Indians.....	1566	460
SERVICE—		
of process, writs, etc., by constables.....	842	159
not to be made on elector on election day.....	74	43
fees of constables for making.....	843	160
SHADE TREES—		
part of highway tax may be expended for, in towns.....	1243	276
when may be adopted as public.....	1344	356
bounty therefor, credit on tax.....	1344	356
penalty for injury to.....	1345	357
SHEEP—		
dogs killing, etc., keeper of dog liable for damages.....	1620	475
diseased, penalty for allowing on highway.....	1489	424
how taken up, and proceedings thereon.....	1489	424
SHERIFF—		
<i>as to elections:</i>		
to distribute election blanks	78	44
to give notice of elections in case of vacancy	80	45
to order special elections of county officers; order, what to contain	82	46
to give notice of other special elections.....	83	47
to make complaint against persons selling liquor to Indians	1568	461
same, penalty for not making complaint.....	1568	461
for false return, how punished.....	4554	497
for purchasing at sale made by him.....	4549	496
SHOWS—		
municipal authorities may license	930	176
SIDEWALKS—		
part of highway tax in towns may be expended for	1243	276
persons in towns may build	1346a	358
penalty for obstruction, etc., same.....	1346a	358
towns may build.....	819a	140
SINKING FUND—		
municipalities may establish.....	958	190
SLAUGHTER-HOUSES—		
not to be built on streams, near villages nor dwellings...	1418	408
how removed	1418	409
penalty for maintaining	1418	409
SLUICeway—		
town liable for damages for defect in	1339	353
penalty for obstructing on highways.....	1327	347

		Sec.	Page.
SMALL POX—			
infection or contagion of, measures to prevent	1416	407	
patients infected with, duties of physician having such...	3	411	
SNAP DRAGON—			
occupier of land to destroy	1481a	420	
penalty for failure to destroy	1481a	420	
SOLDIERS—			
soldiers of U. S. in this state not residents	5	6	
destitute, towns may support	776	118	
disabled, exempt from poll tax	1240	274	
destitute, counties to bury, (<i>note</i>) .....	....	109	
SOLDIERS' MONUMENTS—			
municipalities may erect	937	179	
counties may build	670	107	
SPECIAL ELECTIONS—			
in what case may be held	81	46	
for county officers, how ordered	82	46	
notice of, to be published and given, how	83	47	
how held, conducted and results canvassed	84	47	
SPECIAL TAXES—			
how voted, levied and collected	1164 c-f	256-257	
SPENDTHRIFT—			
wasting estate by drinking; sale to, may be forbidden....	1554	453	
SPIRITUOUS LIQUORS—			
(See SALE OF INTOXICATING LIQUORS)	1548-1569	444-461	
STALLION—			
penalty for letting run at large	1482	421	
how taken up, owner notified, etc.	1483	423	
owner of, liable for damages done by	1482	423	
STATE ROADS			
town supervisors not to alter or discontinue	1265	290	
county boards may alter or discontinue, when	1300	331	
same	670	108	
recorded and used three years, to be legal	1295	326	
STATE SUPERINTENDENT—			
appeal to, how taken and heard	497	92	
to make apportionment of school fund income, when	554	101	
to what towns, etc., to be made	554	101	
to what, not to be made	554	101-103	
to certify apportionment	555	103	
to notify by mail, etc., officers delinquent in reports, of omission	556	103	
may correct apportionment, etc	556	103	
STATE TAX—			
how extended in tax roll	1079	230	
town treasurer to pay county, when	1110	248	
STATISTICS—			
of valuation, taxes, etc., town clerk to make annually....	1004	201	
of farm products, assessors to collect	1010	201	
of deaf, dumb, etc., how collected	1014	203	
of municipal indebtedness to be furnished	1017	204	
blanks for, secretary of state to furnish	1018	204	
steam engines on highway, ch. 175, L. 1885		263	
STEELYARD—			
in use, to be proved and sealed annually	1664	484	
STOCK—			
bank, where assessed	1042, 1044	212-213	
of taxed corporations, exempt	1038	209	

STOCKHOLDERS—		
municipalities subscribing aid, to be.....	954	188
STRANGER—		
when to be relieved by town, as poor person at county charge.....	1512	435
STRAYS—		
wh. may take up, and where.....	1608	469
finder to notify owner, if known.....	1609	469
if unknown, to file notice with town clerk.....	1609	469
when to publish notice.....	1609	469
notice to describe stray, etc.....	1609	469
appraisal of, when required, how to be made.....	1610	470
to be restored to owner on payment of charges.....	1611	470
not claimed, when and how to be sold.....	1612	471
penalty for failure to sell.....	1612	471
penalty for taking stray from finder without consent....	1613	472
finder neglecting duty, to forfeit all charges.....	1613	472
STREAMS—		
to be partition fences, when.....	1390	389
fences on, how built.....	1395	396
slaughter-houses not to be built upon.....	1418	408
STREETS AND ALLEYS —		
may be declared legal highways.....	1224	263
SUB-CONTRACTOR—		
when entitled to lien on buildings of town, etc.....	3328	500
SUBPCENAS—		
may be signed by chairman of town board, etc.....	4053	501
by whom and how served.....	4055	503
SUFFRAGE —		
(See ELECTIONS; ELECTORS.)		
SUMMONS —		
<i>in action to collect personal property tax:</i>		
to require delinquent to appear and answer under oath, etc.....	1100	241
may be served by town treasurer, or any constable, how..	1100	242
SUNDAY —		
Monday to be legal holiday which falls on.....	2577	499
sale of liquors on, prohibited.....	1564	459
SUPERINTENDENT —		
<i>of public instruction (see STATE SUPERINTENDENT).</i>		
county. of poor.....	1520-1526	438-440
SUPERVISORS —		
(See COUNTY BOARD; TOWN BOARD; TOWN SUPERVISORS.)		
SUPREME COURT —		
may order recount of ballots.....	8	35
SURETIES —		
<i>on bonds (see BONDS).</i>		
SURVEYS —		
<i>official:</i>		
to re-establish section corner.....	829a	147
how made for land marks.....	826	146
in laying out drains, how made, filed, etc.....	1363	364
in laying out town highway.....	1269	293
in laying out county road.....	1302	333
in laying out state road.....	1314	341

SWAMP LANDS—	<i>Sec. Page.</i>
proceedings to drain, how had.....	1365 373
contracted for, to be taxed.....	1094a 206
SWEET POTATOES—	
fifty-five pounds a bushel.....	1665 485
SWINE—	
diseased, penalty for bringing into state.....	1492 426

T.

TALLY SHEET—	30
TAVERN KEEPERS—	
selling liquor on Sunday or election day, how punished..	1564 459
(See SALE OF INTOXICATING LIQUORS).	
TAXATION—	
<i>statistics of:</i>	
how collected.....	1004 201
<i>valuation for:</i>	
how made.....	1030 205
<i>property exempt from:</i>	
enumerated.....	1038 203-210
exemption of tree belts.....	1038 210
<i>of municipalities:</i>	944 181
how levied to pay interest.....	952 188
<i>of school districts:</i>	
obtaining loan, territory to remain liable.....	263 57
and no alteration made to exclude.....	263 57
except by consent of commissioners.....	263 57
TAXES—	

LEVY OF TAXES.

<i>in counties:</i>	
when and how levied.....	1074 214
may be levied to create sinking fund, when.....	958 190
to aid towns to build bridges.....	1819 342
for bridges over navigable streams.....	1320 343
tax for such bridge to be voted on.....	1321 344
for subscription to railroad stock, when.....	950 186
for guaranty of railroad bonds, when.....	951 187
for support of county poor, under county system.....	1517 437
for purchasing and stocking county farm for poor, when.....	1523 439
for repair of county roads, when.....	1318 338
<i>in towns:</i>	
for what may be voted.....	776 116
to erect soldiers' monuments.....	937 179
to pay subscription to railroad stock.....	949, 950 186
or bonds issued therefor.....	943 181
or interest on guaranty bonds.....	952 188
or for bridges on navigable streams.....	1320 343
or levied by town board for other bridges.....	1318 342
how levied to pay judgments.....	781 123
<i>in villages:</i>	
if not paid to be certified to town clerk.....	907 168
corporation tax to be levied by board.....	914 169
and when certified to town clerk.....	914 169
same, to be extended in town tax roll.....	914 169
<i>in school districts:</i>	
may be voted to pay loans from trust funds.....	263 57
district clerk to certify amount to town clerk.....	472 80
same, how placed on tax roll.....	473 81

TAXES — (continued).

ASSESSMENT OF.		Sec.	Page.
valuation for, how made and by whom.....	1080	205	
assessors, how chosen	1080	205	
board of assessors, how constituted	1080	205	
assessment district defined	1081	205	
forms of blanks, etc., to be furnished by secretary of state	1032	205	
assessment rolls to be furnished by county clerk.	1032	205	
<i>time:</i>			
when assessment to be made	1033	206	

WHAT TO BE ASSESSED.

to be levied on all, except exempt property	1034	206
terms: "land," "real property," "real estate" and "land," defined.	1035	207
term, "personal property," defined.....	1036	207
improvements on homestead entries as personalty.	1037	207
swamp lands when contracted to be.....	1034a	206
<i>exempt property:</i>		
enumerated.....	1038	208-10
1. lands of state not contracted to be sold, and of United States.....	1038	208
2. lands of counties, including lands held by tax deed on which no taxes subsequently paid for two years; and of towns, cities and villages.....	1038	208
3. personal or real property of religious, scientific, literary and benevolent societies used solely for purposes of association; college and university grounds, not exceeding forty acres; parsonages.....	1038	208
4. personal property of state or county agricultural societies, and lands for fair grounds.....	1038	208
5. fire engines, buildings and grounds.....	1038	208
6. property of Indians not citizens, except lands held by purchase	1038	209
7. public burial grounds, tombs and monuments therein.....	1038	209
8. pensions receivable from United States	1038	209
9. stock in corporations otherwise taxed.....	1038	209
10. debts due to amount equal to debts owing by any person.....	1038	209
11. wearing apparel, family portraits and libraries, kitchen furniture, growing crops	1038	209
12. provisions and fuel for six months, provided by head of family	1038	209
13. personalty of insurance corporations	1038	209

WHERE TO BE ASSESSED.

14. railway property, including pontoon or pile railroads, except lands not adjoining track; exemption not to extend to assessments for local improvements; horse railroads, etc. not exempt	1038	209
15. property of telegraph, except real estate.....	1038	210
16. real estate of Home of the Friendless in Milwaukee; one lot only while so used.....	1038	210
17. real property of industrial societies, etc., used for fair grounds; not over forty acres.....	1038	210
18. tree belts planted as prescribed by law	1038	210
19. parks public, and monument grounds.....	1038	210
19a manufactures of zinc oxide (until 1886).....	1038	210
19b armories, regimental, battalion or company.....	1038	210
19c. real and personal property of Turners	1038	210

TAXES — (continued).

WHERE TO BE ASSESSED.

<i>real property:</i>	<i>Sec.</i>	<i>Page.</i>
in assessment district.....	1039	210
<i>personal:</i>		
where owner resides.....	1040	211
merchants' goods, where located.....	1040	211
logs and timber, to be sawed, at mill.....	1040	211
logs, lumber, etc., not manufacturer's stock, where owner, etc., resides.....	1040	211
change of location after May 1st, not to affect assessment	1040	211
same rule as between school-districts.....	1040	211
if owner be non-resident, then where agent resides.....	1040	211
change of location after May 1st shall not affect assess- ment.....	1040	211
saw logs, timber, railroad ties, telegraph poles, belonging to non-residents and having no agent in this state, when, incorporated companies, at principal office, etc.....	1040a	213
national and other banks, and bankers, where located....	1041	213
	1042	213

TO WHOM TO BE ASSESSED.

<i>real property:</i>		
to owner if known, or occupant.....	1043	212
state lands sold, to owner of contract or certificate.....	1043	212
of deceased persons, to heirs.....	1043	212
incorporated companies, as to them.....	1043	213
exempt land leased, to lessee.....	1043	213
<i>personal property:</i>		
to owner; held as agent, trustee, etc., to holder.....	1044	213
partnership, to firm.....	1044	213
bank stock, to holders.....	1044	213

HOW ENTERED AND DESCRIBED ON ROLL.

<i>lands, lots, etc.:</i>		
and name of owner.....	1045	213
public, or mortgaged to state, how listed, etc.....	1046	214
what description sufficient.....	1047	214
assessment not invalid because separate parcels assessed together.....	1048	215
<i>personal property:</i>		
valuation opposite names of owners.....	1049	215
number of school district, etc.....	1049	215
what items, in separate columns.....	1050	215
<i>bank stock:</i>		
officers of bank to give ownership and prices of stock, etc., banking corporations, a like statement, verified, under penalty.....	1051	216
	1051	216

HOW PROPERTY VALUED.

<i>real property:</i>		
from actual view, when practicable.....	1052	217
value, how determined.....	1052	217
leased, exempt; value of lessee's interest.....	1052	217
county boards may appoint land inspectors; their duties. assessors may use lists of inspectors, except as to im- proved lands.....	1053	217
	1054	218
<i>personal property:</i>		
assessor to value.....	1055	219
may examine owner on oath; notes, bonds, etc.; owner to make sworn statement.....	1056	219
bank stock; as assessor deems its value.....	1057	220
former errors to be corrected.....	1058	220
real property omitted in previous years entered once for each.....	1059	220

TAXES— (continued).

BOARD OF REVIEW.

	<i>Sec.</i>	<i>Page.</i>
who to constitute; when to meet; notices; who clerk.....	1080	221
if adjourned for more than one day must give notice.....	1060	231
duties: to examine roll, correct errors, take proof, hear parties, determine and raise on notice, or lessen valuation, add omitted property, and keep record	1061	221-222

CORRECTION AND RETURN OF ROLL.

assessor, then to correct roll, etc.....	1062	223
affidavit of assessor thereto	1063	223-224
assessor to deliver roll to town, city or village clerk.....	1064	224
clerk to examine and correct roll.....	1065	224
clerk to send statement of valuation to county clerk.....	1066	225
county clerk to send abstract of same to secretary of state	1067	225
messenger sent for statements, when.....	1068	225

COUNTY APPORTIONMENT.

county board to assess relative value in towns, when.....	1073	226
and levy county tax and school tax.....	1074	226
tax previously omitted to be apportioned, etc	1075	226
county clerk to apportion state and county tax, how.....	1076	227
and certify to clerks of towns, etc.....	1076	227
also lands on which taxes unpaid.....	1077	227
appeals may be taken, how.....	1077a	227
commission to hear arguments.....	1077b	229

TAX ROLL.

how made, lands, how entered; village property separately; also public lands sold, and lands mortgaged to state.....	1078	230
clerks to extend tax upon roll, how.....	1079	230
treasurers to give bond, etc.....	1090	231
<i>tax warrant:</i>		
form of	1081	232
tax roll recalled, if treasurer give no bond.....	1082	233
sheriff to act, when no treasurer qualified	1083	233
procedure to obtain roll, or issue new.....	1084	233
clerk to correct errors in assessment roll.....	1085	234
likewise in tax roll.....	1086	235

RE-ASSESSMENT OF TAXES.

when set aside, enjoined, etc	1087	235
actions, when to be stayed for (act of 1878).....	1164a	256

SPECIAL TAXES.

when voted, may be collected on special roll.....	1164c	256
warrant for, how made out.....	1164c	257
town treasurer to execute bond, etc.....	1164d	257
collection and return, how made	1164e	257
delinquent taxes, how collected	1164f	257
village and sidewalk taxes, ch. 265, L. 1885		174-175

COLLECTION OF TAXES.

taxes a lien, till paid, on lands, logs, wood, etc., cut after levy	1088	237
town treasurer to post notices that tax roll in hands.....	1089	237
to remit three per cent. of fees paid before January 1...	1090	238

TAXES — (continued).

COLLECTION OF TAXES.	Sec.	Page.
town orders and jurors' certificates receivable for.....	1091	238
town officers not to purchase orders, etc.....	1092	238
taxes on undivided shares of land may be paid.....	1093	239
double assessments, only tax due to be paid.....	1094	239
receipt books, clerks to furnish treasurers.....	1095	239
stub-book to be kept.....	1095	239
stub-book compared and certified, to be evidence.....	1096	240
levy by distress of goods, etc.....	1097	240
sale on such levy.....	1098	240
surplus on sale to go to owner; property returned, when not invalidated by division of town, ch. 334, L. 1885.....	1099	241 112-113
<i>action to collect personal tax:</i>		
treasurer to make complaint to justice.....	1100	241
justice to issue summons and warrant on failure to appear.....	1100	242
defendant may remove cause.....	1101	243
trial; what questions to be determined.....	1102	244
defendant to be discharged, if no taxable property, nor sufficient to pay, nor is liable.....	1102	244
judgment, when entered; costs, when not taxable; no stay of execution nor exemption.....	1103	245
treasurer may file transcript of judgment.....	1108	245
execution thereon from circuit court, etc.....	1103	245
appeal by either party how made.....	1104	245
how appeal tried in circuit court.....	1105	246
judgment on appeal, execution, no exemption.....	1105	246
<i>supplementary proceedings:</i>		
how had.....	1106	247
final judgment, how far a bar.....	1107	247
<i>extension of tax warrant:</i>		
town, city or village board may extend forty-five days....	1108	247
form of order extending.....	1108	247
treasurer, same authority after extension.....	1109	248
<i>return of uncollected taxes, etc.:</i>		
state and county tax, when treasurer to pay.....	1110	248
county treasurer to receipt for same, in duplicate.....	1111	248
county clerk to countersign and keep one.....	1111	248
<i>return of unpaid taxes:</i>		
how made.....	1112	248
form of return.....	1113	249
return to be verified.....	1114	250
county, to credit town treasurer, amount of, etc.....	1114	251
and deliver certificate of amount to file with county clerk.....	1115	251
when town treasurer's bond indorsed satisfied.....	1116	253
penalty for failure to settle and return taxes.....	1117	253
procedure on failure to pay.....	1118	253
county treasurer to issue warrant.....	1118	253
sheriff to execute same.....	1118	253
liability of sheriff and sureties for his neglect.....	1119	253
liability of town treasurer for false return.....	1120	253
no officer to share in printer's fees, etc.....	1124	253
when town fails to elect officers, tax, how collected.....	1123	254
loss by default of officers, charged to towns.....	1127	254
town failing to levy state or county tax, penalty, etc.....	1163	254
illegal taxes; payer may recover.....	1164	255
remedies of towns in such case.....	1164	255
when stayed for re-assessment.....	1164a	256

TAXES—(continued).

HIGHWAY TAXES.		<i>Sec. Page.</i>	
supervisors to levy tax to open.....	1225a	262	
supervisors to assess.....	1239a	273	
<i>poll tax:</i>			
on whom assessed.....	1240	274	
persons under twenty-one years or over fifty years, exempt.....	1240	274	
disabled soldiers, paupers, idiots, lunatics, exempt.....	1240	274	
<i>property tax:</i>			
limit, from one to seven mills.....	1240	274	
limit of, by population.....	1240	275	
limit of, by size of town.....	1240	275	
supervisors may assess additional, when.....	1244	276	
upon written application of overseer.....	1244	276	
part of, may be expended for sidewalks or shade trees....	1243	276	
moneys from returned, to be paid to overseer.....	1245	278	
moneys returned may be expended by contract.....	1245	278	
time in which to be expended.....	1246	279	
may be paid in money or labor.....	1247	279	
may be assessed, to remove snow.....	1250	281	
person refusing to work pay in money.....	1251	281	
collection of, by levy, distress and sale.....	1252	282	
overseer may empower constable to collect.....	1253	283	
moneys from, to be expended on highways.....	1256	284	
unpaid, overseer to return list of lands, etc.....	1259	285	
unpaid, town clerk to enter on tax roll.....	1260	287	
overseer to render account of.....	1261	287	
what account to contain.....	1261	288	
TEASLE—			
to be destroyed.....	1481a	420	
penalty for not destroying.....	1481a	420	
TELEGRAPH—			
<i>corporations:</i>			
from what taxation exempt.....	1038	209	
TERM OF OFFICE—			
of town officers, other than justices, begins as soon as qualified after election.....	809	134	
and continues one year and until successors elected and qualified.....	811	136	
of justices in towns, begins the first Monday of May next after election; continues two years.....	845	161	
TEXAS OR CHEROKEE CATTLE—			
diseased, penalty for bringing into state.....	1492	426	
THISTLES—			
Canada, occupier of land to destroy.....	1481a	420-421	
penalty for failure to destroy.....	1481a	420	
TIMBER—			
taxes, when a lien on.....	1008	237	
TIMOTHY SEED—			
forty-five pounds a bushel.....	1655	484	
TOMBS, MONUMENTS, Etc.—			
exempt from taxation.....	1038	209	
dangerous or offensive, not to be erected in public ceme- teries.....	1453	414	
TOWNS—			
chairman of, member of county board.....	663	106	
organization, vacating or change of boundaries of, by county board.....	670	107	

TOWNS—(continued).

	<i>Sec.</i>	<i>Page</i>
division of, how effected.....	671	109
apportionment of debt between.....	672	111
when organized, records, etc., to be transferred to new town.....	833	153
corporate bodies, powers as such.....	773	114
conveyance of property to.....	774	114
to others, for use of, to vest property in town.....	774	114
sale of real estate of, clerk to execute, when ordered.....	775	115
buildings of, erection, etc.....	779	123
liens of sub-contractors on buildings of.....	8328	500
county not divided, to be one.....	780	123
judgment against, when collected.....	781	123
plats of, may be vacated by county board.....	670	108
may erect land marks.....	776	119
section corners how re-established, by.....	829a	147
proceedings therefor.....	829a	147-148
proceedings therefor.....	825-829	145-147
may establish free libraries.....	776	117
tax therefor, how voted.....	931	177
may purchase cemetery grounds.....	776	121
purchase to be in same of town.....	1438	413
may erect monuments to soldiers.....	937	179
to support poor settled therein.....	1499	428
may vote money therefor.....	776	116
legal settlement in, how acquired.....	1500	428
liable for support of pauper by another town.....	1513	435
claim for, when barred.....	1514	436
may compromise suit for bastardy.....	1542	443
license to sell liquor, how issued.....	1548	444
license money to be applied to support of poor.....	1562	459
funds of, when deficient, how applied.....	837	157
orders of, when allowed, issued and paid.....	823	143
orders of, when receivable for taxes.....	1091	238
orders of, not to be sued upon until thirty days after demand.....	824a	144
may compromise indebtedness.....	776	117
may make temporary loans.....	941	180
may borrow money from trust funds, ch. 167, Laws 1881.....	59-63	
territory taken from, transcript of all records relating to, be made, ch. 334, Laws 1885.....		112
<i>limit of indebtedness:</i>		
<i>bonds of:</i>		
how issued.....	777	121
tax for payment of, irrevocable.....	778	123
negotiable, when may be issued.....	942	180-1
only on vote of people.....	943	181
to railroads, proposition for.....	945	182
how proposition accepted.....	946	183
only two elections in one year to act on proposition.....	947	185
when accepted, obligatory on town.....	948	185
of narrow gauge railroad, when town may guaranty interest on.....	951	187
form of, and of obligations, etc.....	956	190
new, may be issued to fund debt.....	960a	191
or to exchange for outstanding.....	960b	192
how disposed of.....	960c	193
when may be issued to build bridges.....	1320	343
debts of upon divisions of, ch. 334, Laws 1885.....		112
<i>general elections:</i>		
where held in.....	15	7
may be held in village within town.....	783a	125

TOWNS —(continued).

Sec. Page.

supervisors to be inspectors of	25	17
election districts, how formed	27	19
time of opening and closing of polls and adjournments at	29	20
<i>meetings of:</i>		
annual, when held	782	124
where held	783-783a	124-125
officers elected at	808	184
adjournment of, to another place	784	125
adjournment of, from day to day, and from time to time	785	126
first, in new town	786	126
proceedings at first meeting	787	126
to choose inspectors and clerk	787	126
special, when held	788	127
chairman, to preside	790	128
supervisors to be inspectors at	791	128
<i>electors of:</i>		
powers at annual meeting, general enumeration of	776	116-121
to vote money for necessary expenses	776	116-121
direct the bringing or defense of suit	776	116
to make orders, by-laws, etc	776	116
to support destitute soldiers	776	118
to build town hall, etc	776	119-121
to sell property	776	121
to vote to buy cemetery grounds	776	121
<i>free high schools:</i>		
when to maintain	490, 491	89-90
may limit the amount of tax therefor	495	92
school districts, under township system of school govern- ment (see TOWNSHIP SYSTEM OF SCHOOLS)	516	94
<i>highways and bridges in:</i>		
to raise money to build and repair	776	116
supervisors to have charge of	1223	258
road districts, how formed	1223	259
taxes for, how assessed	1223	260
town board to cause all highways not sufficiently de- scribed to be resurveyed, etc	1228	260
towns may buy bridges	1325b	346
when paid in money, how expended	1225	260
meeting of supervisors therefor	1289	273
limitation on amount of road tax	1240	274
additional tax, when assessed	1244	276
on town lines, how laid, etc	1272, 1273	297-301
between town and village	1274	301
damages, how charged and paid	1291	323
town liable for, on laying out, altering, etc., county roads	1304	337
when laid in town by county board	1305	337
procedure on neglect of town to open county road	1311	339
defective town liable for damages therefor	1339	353
notice necessary to fix liability	1339	353
liability limited to \$5,000	1339a	355
<i>bridges:</i>		
may authorize bonds for	776	118
when to share expense of maintaining in another town	1319	342
county to bear half costs, when	1319	342
when bonds may issue or tax be levied to build on mean- dered streams	1320	343
limit on amount of such tax	1320	343
no such tax to be levied or bonds issued unless authorized by a majority vote of electors	1321	344
question therefor, how and when submitted	1321	344
notice of submission to be given	1321	344
votes to be by ballot; how canvassed and returned	1321	344

TOWNS—(continued).		Sec.	Page.
<i>actions, by and against:</i>			
how conducted.....	776	116	
how town designated in.....	773	114	
town board to have charge of.....	819	140	
not to be brought till claim has been presented, etc.....	824	144	
nor till ten days after next annual town meeting.....	824	144	
cannot be brought on town order until after thirty days notice.....	824a	144	
nor unless notice has been served in case of defective high- way.....	1839	358	
for support of pauper, when barred.....	1514	436	
officers of (see TOWN OFFICERS).....	808-851	134-165	
removal of, by circuit judge.....	976	194	
when county board to appoint.....	1152	254	
default of, in collecting taxes, town liable for.....	1157	254	
board of (see TOWN BOARD).....	819-824	140-144	
by-laws of (see BY-LAWS).....	776	116-121	
clerk of (see TOWN CLERK).....	830-834	149-153	
treasurer (see TOWN TREASURER).....	835-840	154-158	
librarian (see TOWN LIBRARIAN).....	848, 849	161	
TOWN ASSESSOR —			
(See ASSESSOR.)			
TOWN BOARD —			
supervisors shall constitute.....	819	140	
any two a quorum.....	819	140	
vacancy, how filled.....	818	138	
may accept resignations of town officers.....	817	138	
when may fill vacancies in office.....	818	138	
when may appoint justices of the peace.....	845	161	
duties of; general enumeration.....	819, 1553	140-458	
additional powers.....	819	140	
when to meet.....	820-1548	141-444	
compensation of.....	850	164	
may form election districts.....	27	19	
when they must form election districts.....	27	19	
may appoint police.....	824b	144	
may purchase safe.....	884a	164	
may establish lost corners.....	829a	147	
may lease swamp lands for one year.....	257	56	
to be county board, when county has but one town.....	663	106	
when may designate supervisor to act on county board... ..	663	106	
to erect town hall, when ordered.....	779	123	
when may join with corporation to erect building.....	779	123	
expense, how shared.....	779	123	
to control building, etc.....	779	123	
may erect land marks.....	825 et. seq.	145-148	
may establish free libraries.....	931	177	
to approve appointment of directors therefor.....	932	177	
may erect soldiers' monuments.....	937	179	
may purchase grounds for cemetery.....	1438	418	
and cause same to be surveyed and platted.....	1438	418	
and sell lots therein.....	1439	418	
how to apply proceeds of sale.....	1440	414	
may procure weights and measures.....	1662	484	
to license and regulate shows.....	930	176	
may issue licenses to sell liquor.....	1548	444	
to license peddlers, etc.....	1584a	446	
to issue orders only to amount appropriated by town for such purpose.....	823	143	
penalty for unauthorized issues.....	823	143	
when may make temporary loan.....	941	180	

TOWN BOARDS — (continued).	<i>Sec.</i>	<i>Page.</i>
when may issue bonds in aid of railroads (see TOWNS).....	946-956	183-190
to provide sinking fund for payment of debt.....	958	190
when may extend time of collection of taxes.....	1108	247
may declare streets, etc., highways.....	1224	260
may expend money raised for highways.....	1225	260
may levy tax to open highway.....	1225a	262
to open county roads.....	1307	388
neglecting, county board to act.....	1307	388
duty of, in levying tax or issuing bonds to build bridges on meandering streams (See TOWNS).....	1320, 1321	343-344
to be board of health for town.....	1411 <i>et seq.</i>	405-411
duties as such (See BOARDS OF HEALTH).....	1412 <i>et seq.</i>	405-411
to appoint commissioner of Canada thistles.....	1481a	420
<i>as to schools:</i>		
may form or alter districts.....	412	64
proceedings to form districts.....	413, 414	64-66
proceedings as to joint districts.....	415	67
proceedings to alter districts.....	418, 419	68-69
to apportion property and indebtedness, and certify same to clerks of districts.....	420, 421	70-71
to attach to another any district neglecting to maintain school for two successive years.....	423	72
how to dispose of property of district in such case.....	424	72
when to locate school house site.....	477	81
notice of application and meeting therefor.....	478	82
to meet, locate site, and award compensation.....	479	83
in case of joint district, boards of both towns to act.....	483	86
under township system, to present statement, etc., to elect- ors at annual meeting.....	535	95
<i>as board of audit:</i>		
when to meet.....	820	141
when part absent, who to act.....	820	141
town clerk to be clerk of board.....	832	150
duties of board enumerated.....	821	142
to examine accounts of officers.....	821	142
to audit accounts against town.....	821	142
to examine all demands presented.....	821	142
report of, to be read at next town meeting.....	822	143
accounts audited, how paid.....	823	143
no claim to be sued until presented to board.....	824	144
TOWN BOARD OF AUDIT—		
(See TOWN BOARD).....	820-824	141-144
TOWN BONDS—		
(See TOWNS).		
TOWN CEMETERIES—		
town may purchase land for.....	776	121
how purchased, laid out, etc.....	1438	413
town board may sell lots in.....	1439	413
proceeds of sale, how applied.....	1440	414
when included in city, city to control.....	1439	413
planting of trees, erection of monuments, etc., in, how reg- ulate.....	1453	414
restrictions on location.....	1454	415
roads to, how obtained.....	1299a	327
TOWN CHAIRMAN—		
elected at annual town meeting.....	808	134
election to be by ballot.....	797	131
to take and file oath.....	809	134
term of office.....	811	136

TOWN CHAIRMAN—(continue 1).

Sec. Page

duties of:

as chairman of inspectors of elections (see ELECTIONS) . . .	25	17
as member of the county board (see COUNTY BOARD) . . .	663	100
as member of board of review (see TAXES) . . .	1060, 1061	221
to preside at town meetings . . .	790	123
to state order of business at same . . .	795	130
to decide questions of order, declare votes, preserve order, etc.	792	123
to sign bonds issued by town . . .	777	121
same . . .	956	190
to sign town orders . . .	823	143
to sign deeds of town cemetery lots . . .	1439	413
to approve bonds of town officers . . .	810	135
may administer oaths . . .	818a	140
to approve bonds of justices of the peace . . .	846	162
to prosecute official bonds for town . . .	984	499
to appoint directors for free libraries . . .	932	177
to erect and repair guide boards . . .	1227	264
to prosecute for defacing same . . .	1228	264
may require tramps in county jail to work on highways (note) . . .		258
to repair state and county roads . . .	1811	339
to prosecute for forfeitures recoverable before a justice . .	3304	493
to notify district attorney of others . . .	3305	493
to read "Canada thistle act" at town meeting, ch. 233, L. 1885 . . .	1481a	421
to certify to scalp of wild animal, ch. 116, L. 1883 . . .	1c30a	476
to bring suit against owner of steam engine doing damage to bridges, &c., ch. 175, L. 1885 . . .		264

compensation of 850 164*penalties:*

for discounting or "shaving" town orders, etc.	1093	238
for same . . .	4550	496
penalty for neglect to repair guide boards . . .	1227	264
for having interest in purchases, sales, contracts, etc., of town . . .	4549	496
for making unlawful pledge or contract in official capacity . .	4549	496
for making false certificate, entry, etc . . .	4549	496
for any neglect or malfeasance . . .	4549, 4550	496

TOWN CLERK—

to be elected at annual town meeting . . .	808	134
to take oath . . .	809	134
to give bond . . .	830	149
may appoint deputy; his duties . . .	831	149

duties of:

general enumeration . . .	832	150
to act as clerk of town meetings; be clerk of election; keep and record minutes, resolutions, orders, etc.	833	150-153
to transmit to county clerk certified list of town officers and their postoffice addresses; and all changes; notify officers elect; to notify county treasurers of appointment of town treasurer . . .	832	150
to send clerk of county court list of justices; their terms, etc.	832	150
to record special vote on request; to post notices . . .	832	151
to post up by-laws of town . . .	832	151
to act as clerk of town board, keep record, file accounts allowed, and make statement . . .	832	152
to furnish board of audit statement of moneys received from county treasurer, etc.	833	152
to have custody of town records and papers filed in office, etc.	832	152

TOWN CLERK — (continued).

	<i>Sec.</i>	<i>Page.</i>
to file chattel mortgages; how to enter filing in book.....	832	153
to demand books of justice when office vacant, etc.....	832	158
to perform duties required by law, elsewhere herein.....	832	153
to post duplicates of the report of the town board in three public places in town.....	832	153
to keep all valuable papers in safe.....	834a	154
to keep a record of all licenses issued (<i>note</i>) .....	....	446
to keep in office list of lands belonging to drainage fund, etc. (<i>note</i>)	251	56
to convey property of town, when	775	115
<i>on annexation, division or creation of towns:</i>		
clerk of new, to receive files and copies of records of old town	833	153
to copy all not removable.....	833	153
of old town to deliver such records.....	833	153
in new town to notify justices elect to meet and draw lots for terms	814	136
to conduct such drawing	815	137
to make duplicate certificates thereof, and of the results	816	137
to file one, and transmit one to clerk of circuit court	816	137
on annexation, clerk of consolidated town to record act of annexation.....	928	176
<i>as to auctioneers, peddlers, etc.:</i>		
to issue license to peddlers when ordered by board.....	1584b	464
<i>as to census and statistics:</i>		
when to take census, etc.....	994	196
may appoint assistants	994	196
to take oath before taking census, and return same therewith	195	196
to begin same June 20th.....	996	197
how to take same	996	197
not to take same in villages.....	997	197
to make reports of pauperism and crime to county clerks, to make statement of assessed valuation of all property of town, and taxes therein	1004	201
to transmit same to county clerk, when	1004	201
when to make such statement for villages.....	1004	201
to furnish statement of bonded debt of town.	1017	204
<i>as to drains:</i>		
to record order, laying town drains	1362	362-369
and award of damages thereon.....	1363	369
and assessment and award of benefits.....	1364	372
and order, etc., when drained land in two towns.....	1365	373
to file and certify notice of appeal.....	1366	374
to enter on tax roll assessment of benefits.....	1369	378
to apportion deficit on lands benefited.....	1369	378
to place on tax roll assessment for county drains.....	1378	383
to enter on tax roll expense of removing obstructions from drains	1384, 1386	384-386
<i>as to elections:</i>		
to notify general elections.....	19	10
to notify special elections.....	38	47
to furnish registers with registry and election blanks.....	78	44
to provide and keep ballot boxes	30	21
to be clerks of election	25	17
to file statement of canvass.....	44	80
<i>as to town meetings:</i>		
to be clerk; keep minutes, and file same; to keep poll list.....	793	129
to read result of election.....	804	132
to record statement of vote.....	805	132
when requested by twelve electors to post notices that vote as to place of holding meetings will be taken.....	783	124

TOWN CLERK — (continued).

	<i>Sec.</i>	<i>Page.</i>
to call special town meeting, on request of twelve electors; how to notify same.....	788	127
to call special town meeting under section 1548b, to fix amount of license.....	1548b	447
to read report of board of audit.....	832	143
to notify officers of their election.....	809	184
<i>as to fences:</i>		
to record division of partition fences.....	1392	391
to record same when made by fence viewers.....	1393	393
to record division of town line fences.....	1401	404
to file chattel mortgages.....	2314	487
to record marks and brands.....	1468	417
to attest deeds of town cemetery lots.....	1439	414
to file appraisal of stray.....	1610	470
and appraisal of lost goods.....	1615	479
<i>as to highways:</i>		
to record orders laying highways.....	1269	293
to note time of recording.....	1269	294
to record orders laying town line roads.....	1273	297
and highways between towns and villages or cities.....	1274	301
and highways laid to lands excluded therefrom.....	1275	302
to record report of commissioners on appeal from order laying highway.....	1280	311
to notify overseers of appointment, when.....	1229	265
to file report of jury on assessment of damages.....	1283	320
to file all papers relating to highways and the laying thereof.....	1297	326
to file bond or road overseer.....	1230	265
to make duplicate of lists for road taxes in each district ..	1241	275
to keep one and deliver the other to proper overseer of highways.....	1241	275
to annex warrant to latter; form.....	1241	275
to enter delinquent highway taxes on next tax roll.....	1260	287
<i>as to sale of liquors:</i>		
to attest licenses.....	1548	444
when to deliver same.....	1548	444
to issue summons on proceedings to revoke license.....	1558	455
to record revocation of license.....	1559	457
<i>as to schools and school districts:</i>		
to file orders forming districts.....	413	64
or joint districts.....	415	67
and orders altering districts.....	419	69
to make report to county superintendent; when and what report to contain.....	463	75
to report to county superintendent his name, postoffice ad- dress, etc., within ten days after election.....	467	75
and name and address of each district clerk.....	467	76
to see that reports of district clerks are properly made ..	467	76
and to keep map showing boundaries of districts.....	467	76
to apportion school moneys.....	467	76
under township system, to certify amount to be paid by another town in which part of a joint sub-district is situated.....	549	97
may subscribe for Wisconsin Journal of Education.....	503	94
<i>as sealer of weights and measures.....</i>	1662	484
to test standards once in five years.....	1662	484
<i>as to taxes:</i>		
to annually transmit to secretary of state, assessed valua- tion of districts indebted to the trust funds.....	263	57
to be member of board of review.....	1060	221
to be clerk of same; duties.....	1060	221
to keep record of changes in assessment.....	1061	221

TOWN CLERK—(continued).	<i>Sec.</i>	<i>Page.</i>
to file assessment roll	1064	224
on completion of roll, to transmit to county clerk statement of valuation.....	1066	225
to make tax roll.....	1078	230
when directed by county board to carry out items separately thereon.....	1078	230
to include therein amount to be raised, properly apportioned	1079	230
to assess and include school district taxes voted, etc.	473	81
also amounts due from one district to another on apportionment of property on division	421	71
and tax voted to free high school	495	92
and amounts due from district on loans to trust funds. . .	263	57
and amounts collected on unlawful tax and paid to district and afterwards refunded to payer.....	1164	255
and amounts to pay judgments against the town	781	123
and judgment against villages.....	923	170
and against school districts.....	488	89
and corporation tax of villages, when.....	915	170
and delinquent taxes for improvements in villages, when.....	907	168
and delinquent taxes in villages specially incorporated....	1	171
and delinquent sidewalk and gutter tax.....	3	173
and unpaid highway taxes assessed on lands	1260	237
and amounts of costs and fees due from town or village on highway matters.....	1291	323
and all audited damages against the town or village on laying highways, etc.....	1291	323
and all assessments against lands for expense of constructing drains.....	1378	382
and any tax voted to support township system of schools.....	533	95
and any deficiency when amount voted is insufficient....	539	95
to correct erroneous descriptions in assessment roll.....	1085	234
to correct same where parcels of land erroneously assessed together.....	1085	235
and to explain correction in margin of roll.....	1086	235
to issue warrant with roll; form.....	1081	232
to recall roll from treasurer failing to give bond, when...	1083	233
when to make new roll.....	1082	233
when to deliver roll and warrant to sheriff.....	1083	233
<i>as to town obligations:</i>		
to sign town bonds.....	956	190
to sign town bonds for building bridges.....	1322	344
to countersign town orders.....	823	143
but not till tax voted to pay same.....	823	143
nor in excess of amount appropriated therefor.....	823	143
forbidden to purchase town orders.....	1092	238
to furnish statement of bonded debt to secretary of state, when required.....	1017	204
to obtain and keep cancellation book for use of town.....	....	165
to enter therein orders.....	....	165
to enter in cancellation book orders, certificate bonds and coupons canceled and destroyed.....	...165-166	
<i>miscellaneous duties, etc.:</i>		
to receive books of justice on his removal.....	3588	500
to demand same, on death of justice.....	3589	501
to deliver same to another justice.....	3590	501
prohibited from being interested in printing delinquent tax list.....	1134	253
<i>compensation of:</i>	850	164
fees of	834	154
compensation for taking census.....	1003	198

TOWN CLERK—(continued).*penalties and liabilities:*

	<i>Sec.</i>	<i>Page.</i>
for issuing unauthorized order.....	823	143
for purchasing town orders.....	1092	238
for neglect of duty as town sealer.....	1663	484
for neglect to make school report.....	499	93
for neglect to take census.....	1001	198
for neglect to return same.....	1003	198
for neglect or refusal to do duties under.....	1004	201
for examining sealed ballots, sec. 4, ch. 264, Laws 1895		33
for neglect to furnish statistics.....	1015	209
for general neglect of duty.....	1019	204
for having interest in printing delinquent tax list.....	1134	253
as to general penalties and punishments (see TOWN OFFICERS).		

TOWN DRAINS—

how laid out, divided and constructed.....	1359-1371	360-379
(See DRAINS)		

TOWN HALL—

town may vote money to build.....	776	119
town board to control erection.....	779	122

TOWN LIBRARIAN—

election of.....	808	134
to give bond.....	848	164
duties of.....	849	164

TOWN MEETINGS—

powers of electors at.....	776	116-119
when held.....	783	124
where held.....	783	124
may be held in village or city, when.....	783a	125
place of holding, how changed.....	783	124
adjournment of, to more convenient place.....	784	125
adjournment of, to future day.....	785	126
first, in new town, when held.....	786	126
proceedings at such first.....	787	126
chairman or supervisor to preside.....	790	128
supervisors to be inspectors of elections at.....	791	128
chairman to regulate proceedings at.....	792	128
inspectors and clerks to take oath.....	794	130
order of business to be announced and observed.....	795	130
polls to open and close by proclamation and when.....	796	130
officers to be chosen by ballot at.....	797	131
who entitled to vote at.....	798	131
challenge of vote at.....	801	131
c canvass, of voters at.....	803	133
canvass, how conducted.....	803	133
result to be announced.....	804	132
written statement of canvass made and certified.....	805	132
plurality of votes to elect.....	806	133
lots drawn on tie vote for officers.....	806	133
canvass of votes on proposition, not for officers.....	807	134
<i>special:</i>		
for what purposes may be held.....	788	127
to be called by clerk on request, signed by twelve electors.....	783	127
request to be recorded.....	789	127
notice of, how given; when to be published.....	789	127
to vote on proposition of railroad corporation, when to be called.....	946	183
elected at annual town meeting.....	808	134
only resident electors eligible.....	808	134
election to be by ballot.....	797	131
all names to be on a single ballot.....	799	131

TOWN MEETINGS—(continued).

Sec. Page.

special—(continued).

to be notified of election, unless present.....	809	134
neglect to take oath deemed refusal to serve.....	809	134
bonds of, how executed, etc.....	810	135
term of office.....	811	136
vacancies filled for residue of term.....	811	136
when filled by town board.....	818	138
appointees to fill vacancies to qualify.....	818	139
resignation of, to whom made.....	961	193
when may be accepted.....	817	138
removal of, by circuit judge.....	978	194
to notify district attorney of trespass on public lands (<i>note</i>).....	243	56
<i>compensation of:</i>		
allowed in but one capacity.....	850	164
<i>penalties:</i>		
for refusal to serve.....	812	136
for acting before qualifying.....	812	136
for discounting or "shaving" town orders, etc.....	1092	238
for same offense.....	4550	496
for having interest in purchases, sales, contracts, etc., of town.....	4549	496
for making unlawful contract, pledge, etc., in official capacity.....	4549	496
for making false certificates, entries, etc.....	4549	496
for any and every willful neglect, malfeasance or misfeasance.....	4549-4550	496

TOWN ORDERS—

town board to draw.....	819	140
to be signed by chairman; countersigned by clerk.....	823	143
not to issue until tax voted or issue authorized by board.....	823	143
issue not to be authorized in excess of amount town is authorized to appropriate.....	823	143
penalty for unauthorized issue.....	823	143
cannot be sued until thirty days after demand.....	824a	144
receivable for taxes in town.....	1091	238
town or county officers not to purchase; forfeiture therefor.....	1092	238
punishment therefor.....	4550	496
to be entered in cancellation book.....	....	165
to be canceled and destroyed, when.....	165	166

TOWN SUPERVISORS —

to be elected at annual town meeting.....	806	134
to be chosen by ballot.....	797	131
to be electors of town.....	808	134
of what number to consist.....	808	134
one to be designated on ballots, as chairman.....	808	134
to take and file oath of office within ten days after election or notification.....	809	134
neglect to file oath, a refusal to act.....	809	134
penalty on, for refusal to serve.....	812	136
for entering on duties before taking oath.....	812	136
term of office.....	811	136
vacancy in, how filled.....	818	138
to designate supervisor to act on county board, when.....	663	106
to constitute county board, when but one town in county.....	663	106
to report trespasses on public lands to district attorney (<i>note</i>).....	243	56
to draw orders on the treasurer.....	819	140
but not till tax voted to pay the same.....	823	143
nor in excess of amount appropriated therefor.....	823	143
penalty for violation of above provisions.....	823	143
may approve justice's bond.....	846	162
may administer and certify oaths.....	1299	327
may forbid sale of liquor to drunkard or spendthrift.....	1554	453

TOWN SUPERVISORS—(continued).

	Sec.	Page.
<i>compensation of</i>	850	164
<i>to constitute town board</i> (which see).....	819	140
<i>duties as such</i>	819	140
<i>as a board of audit</i> (see TOWNS).....	820	141
<i>duties as such</i>	821	142
<i>to act on board of review</i> (see TAXES).....	1060-1061	221
<i>as to elections:</i>		
<i>to constitute board of registry</i>	20	10
<i>when required to register voters</i>	20	10
<i>registry, how made, etc.</i> (see ELECTIONS).....	21-24	11-14
<i>to be inspectors of election</i>	25	17
<i>vacancy in board, how filled</i>	25	17
<i>to appoint one or more clerks</i>	25	17
<i>oath of inspectors prescribed</i>	28	20
<i>may divide town into election districts</i>	27	19
<i>to fix boundaries of districts and appoint inspectors therefor</i>	27	19
<i>to designate place of holding polls therein</i>	15, 27	7-19
<i>to file order therefor with town and county clerks</i>	27	19
<i>how to conduct election</i> , (see ELECTIONS).....	28-45	20-30
<i>to constitute board of inspectors, at town meetings</i>	791	128
<i>vacancies in board how filled</i>	791	128
<i>may adjourn meeting to another place</i>	784	125
<i>may adjourn from day to day and from time to time</i>	785	126
<i>how chosen at first meeting of new town</i>	787	126
<i>how to canvass votes at town meeting</i>	802-807	132-134

DUTIES AS TO HIGHWAYS AND BRIDGES.

<i>to have supervision of highways and bridges in towns</i>	1223	258
<i>to direct repairs and removal of obstructions</i>	1223	258
<i>to cause roads to be described and recorded in office of town clerk</i>	1223	258
<i>to divide town into road districts, and make record thereof with the clerk</i>	1223	259
<i>such division not to be made within ten days of town meeting</i>	1223	259
<i>to assign inhabitants to proper road districts</i>	1223	260
<i>to require overseers to perform their duties</i>	1223	260
<i>to appoint overseer of highways, in case of vacancy, and file warrant therefor with town clerk</i>	1229	265
<i>to approve bond of overseer</i>	1230	265
<i>may remove overseer for neglect, etc., and prosecute him for penalty</i>	1231	267
<i>may issue warrant against overseer for neglect to make lists of taxpayers for his road district</i>	1238	272
<i>also, when he neglects to return delinquent taxes</i>	1259	285
<i>to assess highway taxes in their towns</i>	1223	260
<i>when may expend highway tax raised in money</i>	1225	260
<i>when may contract for repairs thereon, for a term of years</i>	1225	260
<i>such contract limited to five years</i>	1225	262
<i>to levy tax to open highways</i>	1225a	262
<i>to report annually to board of audit the amount of highway tax assessed and collected</i>	1226	263
<i>the amount paid in money and in labor</i>	1226	263
<i>the manner in which any money raised therefor has been expended</i>	1226	263
<i>and an estimate of sum necessary therefor for ensuing year, specifying improvements required</i>	1226	263
<i>when may meet to assess highway taxes</i>	1239	273
<i>to make lists for each road district</i>	1239	273
<i>what such lists to contain</i>	1239	273

TOWN SUPERVISORS — (continued).

DUTIES AS TO HIGHWAYS AND BRIDGES — (continued.)		Sec.	Page.
how to proceed in making assessment		1240	274
1. to assess a poll tax; 2. to assess residue to an amount not less than one nor more than seven mills on the dollar, on the valuation of real and personal property, in each district		1240	274-5
may levy additional highway tax, when		1244	276
limitation on amount of tax		1240	275
to cause duplicate lists to be made, one to be delivered to town clerk, the other with warrant annexed, to overseer to sign such warrants; form thereof		1241	275
may direct part of tax to be expended for sidewalks and shade trees		1243	276
may extend time of payment of part of highway taxes		1246	276
to lay out, alter and discontinue roads (see HIGHWAYS AND BRIDGE-).		1223	260
application therefor, by whom to be signed		1265	290
not to alter or discontinue road laid out by county board		1265	290
when to lay out road three rods wide		1264	289
not to act when personally interested		1266	290
on application, to give notice of time and place of meeting town board by resolution may expend returned highway taxes by contract		1245	278
to meet and decide thereon; may adjourn not exceeding thirty days; notice, etc.		1268	292
on granting application, to make an order therefor containing description of road, and file the same with clerk of town		1269	292
application deemed denied unless order filed within ten days		1269	293
to fix damages by agreement, or assessment, and file same, etc.		1270	295
how to assess damages; benefits to be considered		1271	297
in laying road on town line, supervisors of both towns to meet and act together		1272	297
application therefor, to whom addressed; by whom to be signed		1273	297
notice of meeting, how signed and posted		1273	298
order granting application, to fix rights and liabilities of each town; where to be filed, etc.		1273	297-301
when town liable to repair bridge or highway on town line becoming so by user		1273	301
when road between town city or village, how to proceed on application		1274	301
on application for road to land excluded from highway, how to proceed		1275	302
rule and limit as to damages to be assessed in such case		1275	303
on appeal from order to have notice, etc.		1277	307
may appear and have appeal removed to another justice		1278	308
to strike jury		1279	309
second appeal, when had, and proceeding thereon		1281	313
proceeding, if order be reversed on appeal		1282	315
effect of order when not appealed from, and of reversal on appeal in certain cases to prevent further action for one year		1288	316
who may appeal from assessment of damages by jury		1289	322
applications, orders, etc., laying, etc., to be filed in office of town clerk		1297	326
effect of same as evidence		1298	327
may administer oaths when required and certify them		1299	327

TOWN SUPERVISORS — (continued).

	Sec.	Page.
when to notify owner to remove fences on opening highway.....	1284	316
when may cause the same to be removed.....	1284	316
to order encroachments to be removed.....	1330	343
what to specify in order, and upon whom to serve the same.....	1330	343
how to proceed if encroachment denied.....	1331	349
if encroachment not found, costs to be paid and charged to town.....	1336	353
either party may appeal.....	1336	353
to allow fees to protect hedges on highways.....	1343	356
may declare street and alleys in villages to be public highways.....	1224	276
how such order made and recorded.....	1224	276
may discontinue unrecorded roads.....	1292	324
to repair abandoned turnpikes and plank-roads.....	1293	324
to repair same when corporation neglects, and collect toll therefor (<i>note</i>).....	1891	140
when to open roads laid by county board.....	1307	338
when to repair the same.....	1310	339
<i>bridges:</i>		
may levy tax for rebuilding and repairing.....	1818	343
tax not to be levied unless all assent, and then not to exceed \$300 for one bridge, etc.....	1818	343
to prevent fast driving on.....	1323	344

DUTIES IN LAYING TOWN DRAINS.

application for, by whom made.....	1359	360
notice of time and place of hearing; what to contain, how served.....	1360	361
to meet, view, hear, adjourn and decide.....	1361	361
to establish route, fix dimensions, make survey, divide into sections, file order, etc.....	1363	363
to file decision if application denied.....	1363	364
may appear on appeal from order.....	1363	365
when drain to be laid by supervisors after appeal.....	1363	366
to estimate costs, assign parts to each owner to maintain; fix damages; file awards; direct repairs; collect expenses; change grade, etc.....	1363	369-372
when may build bulkhead.....	1363	372
to apportion and assess cost, determine part town to pay; make certificate and file same, etc.....	1364	373
<i>on laying drains in adjoining towns:</i>		
application for, how made.....	1365	373
to give notice; meeting; hearing; order, award, etc., to be filed.....	1365	373
duty on appeals from assessment or award.....	1366-1368	374-376
assessment, how collected; how in two towns.....	1369	378
to tender work of construction to owner; if not taken, to let to lowest bidder.....	1370	378
to assess cost of, above estimates, and to certify and file same.....	1371	379
to re-assess benefits, when.....		387
may alter and discontinue drains.....	1380	383
may drain public lands.....	1381	384
to remove obstructions from drains.....	1383	384
to compel such removal, how.....	1384	384
to procure jury when obstruction denied.....	1385	385
how to remove same; found by jury if owner do not.....	1386	386

TOWN SUPERVISORS — (continued.)

Sec. Page.

DUTIES RELATING TO SUPPORT OF POOR.

to have charge of poor under town system.....	1501	480
to compel relatives to support, when.....	1502	480
may recover for such support.....	1505	482
may have warrant against property of such relatives, when.....	1506	482
may seize and hold same.....	1507	483
to make inventory thereof, etc.....	1507	482
to receive proceeds of property, if sold.....	1509	483
when to restore same.....	1510	483
to provide for transi- t poor, also see note.....	1512	485
and when dead, bury them; expense thereof, how paid....	1512	485
to give notice to town liable for such support.....	1513	485
to remove such poor person, when notified; liability for neglect.....	1514	486
to report expenses of support of poor to town meeting....	1516	487
may apprentice poor minors.....	1511	483
when to consent to such apprenticing (<i>note</i>).....	2878	485
<i>as to bastards:</i>		
may approve settlement with putative father.....	1580	442
may prosecute proceedings.....	1539	442
may institute proceedings to discover father.....	1540	442
may compromise with father for support of child.....	1542	443

MISCELLANEOUS POWERS AND DUTIES.

to divide joint district library.....	486	87
when to be fence viewers.....	1389	389
to prosecute for defacing guide boards.....	1228	264
to prosecute for penalty for permitting noxious weeds to grow.....	1481	420
To appoint Canada thistle commissioners.....	1482a	421
vagrant boys cannot be sent to industrial school until they have been notified.....	4968	508
to make complaint of unlawful sale of liquor to spend- thrifts, minors, and others, and on Sunday.....	1553	458
to forbid sale of liquor to habitual drunkards, etc.....	1554	458
may renew such prohibition.....	1555	454
may revoke liquor licenses; proceedings therefor. 1558, 1559	455-457	
to license peddlers.....	1584a	468
may apply to change location of toll gate (<i>note</i>).....	1880	140
to make list of jurors.....	2526	491
from whom to select jurors.....	2530	492
when to notify district attorney of forfeitures.....	3305	493
to consent to sale of land of wards (<i>note</i>).....	4000	140

PENALTIES.

for discontinuing or "shaving" town orders, etc.....	1092	288
for same offense.....	4550	496
for having interest in purchases, sales, contracts, etc., of town.....	4549	496
for making unlawful contract or pledge in official ca- pacity.....	4549	496
for making false certificate, entry, etc.....	4549	496
for neglect or malfeasance.....	4549	496

TOWN TREASURER—

elected at annual town meeting.....	808	184
election to be by ballot.....	797	181
to take and file oath.....	809	184
neglect, deemed a refusal to serve.....	809	184
to give bond.....	835	154
bond of, by whom approved.....	810	185

TOWN TREASURER—(continued).

	Sec.	Page.
term of office.....	811	136
may resign.....	817	138
vacancy, how filled.....	818	138
<i>duties of:</i>		
to pay bills audited by town board.....	823	148
to file bond of town clerk.....	830	149
to take charge of town moneys; to preserve books, etc.: to keep itemized account; to collect and pay over taxes; to perform duties as to schools; to deliver books, moneys, etc., to his successor; to make statements to county board, etc.....	884	155-137
payment and order thereof, when funds deficient.....	837	157
to make statement to county treasurer of funds; to verify same.....	838	157
to pay over to village treasurer moneys collected on ac- count of delinquent village taxes.....	3	172
to pay over to village treasurer moneys collected on ac- count of delinquent sidewalk and gutter taxes.....	4	174
to receive surplus proceeds of sale of animals distrained..	1636	483
and of strays, also.....	1612	471
if not applied for, for one year, to pass same to poor fund	1636	483
to receive one-half net of lost goods, etc., found and sold by finder.....	1617	474
to receive proceeds of animals, unlawfully at large, and taken up and sold.....	1487	423
to prosecute any overseer of highways failing to pay over moneys unexpended.....	1262	239
to notify overseers of highways of road tax moneys on hand.....	1245	278
to pay over same, on overseer's order and chairman's ap- proval.....	1245	278
to receive dues from insurance agents, and pay same to local fire department, when (<i>note</i>).....	1926	155
<i>as collector of taxes:</i>		
to give bond to county treasurer, and take receipt therefor	1080	231
to deliver receipt so taken to town clerk, and receive roll and warrant.....	1081	232
to post notice that tax roll is in his hands, etc.....	1089	237
to collect tax not paid by January 10th.....	1089	237
to call once on each person taxed.....	1089	237
to remit certain per cent. when taxes paid before January first.....	1090	238
to receive town orders and jurors' certificates.....	1091	238
forbidden to deal in orders, town or county.....	1092	238
to receive part payment on undivided shares, etc.....	1093	239
to return balance.....	1093	239
to collect but one tax doubly assessed.....	1094	239
to give receipt for taxes paid, and keep stub book, indicat- ing tax paid for previous years.....	1095	239
to compare stub book with tax roll.....	1096	240
to return for cancellation, bonds, coupons, certificates and orders received in payment of taxes.....	165-166	
to levy on logs, wood and timber cut after levy, how and when.....	1088	237
to levy unpaid taxes by distress and sale of goods, etc....	1097	240
how to notify and conduct sale.....	1098	240
to return surplus to owner; to return property if no bid..	1099	241
to bring action before justice for tax on personalty.....	1100	241
may serve summons therein.....	1100	241
proceedings in action.....	1101, 1103	243-245
to file transcript of judgment, when.....	1103	245
may appeal from adverse judgment.....	1104	246

TOWN TREASURER — (continued).

<i>as to school moneys:</i>	<i>Sec.</i>	<i>Page</i>
may institute supplementary proceedings.....	1106	247
to execute warrant when renewed; powers therefor.....	1109	247
to retain amount belonging to town treasury.....	1110	248
to pay over the whole of state tax on or before last Monday in January.....	1110	248
to pay over state and county tax to county treasurer.....	1111	248
to take duplicate receipts therefor.....	1111	248
to present such receipts to county clerk.....	1111	248
to make return of delinquent taxes, how.....	1112	248
form of same.....	1113	249
to verify same by affidavit.....	1114	250-251
to receive certificate thereof, and deliver same to county clerk.....	1115	250-251
bond of treasurer, as tax collector, thereupon to be satisfied.....	1115, 1116	251-252
to collect school taxes.....	473	81
to collect tax to pay judgment against school district....	488	87
to collect high school tax.....	495	92
to collect school tax under township system.....	538, 539	95
to receive school moneys apportioned his town, from county treasurer.....	540	96
to pay the same, and how.....	540	96
to collect money for joint district, when both towns have not adopted the township system.....	548, 549	97
to receive apportionment from school fund income, and pay same to proper school treasurer.....	557	103
to receive from county treasurer and pay to district treasurer.....	468	77
to pay district treasurer school district taxes.....	468	77
to certify school moneys in his hands to town clerk for apportionment.....	468	77
to certify moneys received from school fund income.....	468	77
to certify to district clerks amount paid to district treasurer.....	468	77
to prosecute county treasurer neglecting to pay over school moneys.....	468	78
<i>as to drainage fund:</i>		
to receive from county treasurers.....	256	56
to pay out, same as other moneys.....	256	56
<i>as to sale of liquors:</i>		
to receive and receipt for moneys paid for license to sell liquors.....	1548	444
to keep same separate from other moneys.....	1562	459
to prosecute for selling liquor to prohibited persons.....	1555	454
to prosecute officers neglecting to prosecute violations of law regulating sale of liquors.....	1553	453
<i>in relation to forfeitures:</i>		
to demand from each justice of the town all moneys collected as forfeitures.....	3307	494
to institute action on justice's bond on refusal.....	3307	494
to pay same to county treasurer on or before the first Monday in February in each year.....	3308	494
to make sworn statement thereof to county clerk.....	3306	494
<i>fees of:</i>		
town meeting may limit.....	840	158
fees for receipt and disbursement of surplus moneys on sale of trays.....	1636	483
<i>penalties and liabilities:</i>		
for refusal to serve.....	812	136
for serving before qualifying.....	812	136
for discounting or "shaving" town orders, etc.....	1092	238
for same.....	4550	496

TOWN TREASURER—(continued).		
<i>penalties and liabilities—(continued).</i>		<i>Sec. Page.</i>
for having interest in purchase, sales, contracts, etc., of town	4549	496
for making unlawful contract or pledge in official capacity	4549	496
for making false report, certificate, entry, etc.	4549	496
for any neglect or malfeasance	4519, 4550	496
for neglect to collect and pay over forfeitures	3309	494
for neglect to settle with county treasurer	1117	253
how proceeded against on such neglect	1118	253
any person injured by false return or fraudulent act may sue on bond	1120	253
for making unverified return of delinquent taxes	1114	250
TRAMPS —		
may be required to work on highways (<i>note</i>)		258
TRANSCRIPTS —		
of judgments, against school district may be filed with town clerk; his duty thereon	488	87
against town, may be filed with town clerk; his duty thereon	781	123
against village, may be filed with town clerk; his duty thereon	923	170
TREASURERS —		<i>Sec. Page.</i>
<i>of counties (see COUNTY TREASURER).</i>		
<i>of towns (see TOWN TREASURER).</i>		
TREES —		
penalty for felling in highway	1329	348
penalty for not removing, so fallen ..	1328	347
planting in cemeteries, how regulated and controlled	1453	414
<i>shade trees:</i>		
part of highway tax may be expended for, in towns	1243	276
when may be adopted as public	1344	356
bounty therefor credit on tax	1344	356
penalty for injury to	1345	357
TREE BELTS —		
exempt from taxes, when	1038	210
what to be planted to exempt land from taxation	1469	418
bounty for, when allowed	1469	418
how to be planted	1470	418
assessor's duty as to	1471	419-420
TRESPASS —		
<i>on public lands:</i>		
town officers, etc., to notify district attorney of (<i>note</i>) ...	243	56
TRUSTEES —		
of personal property, to be assessed therefor; how entered on assessment roll	1044	213
TUNNELS —		
when and how may be constructed under highway, etc. .	1346	338
trust funds; loans from, how obtained		59
trust fund; towns, cities and villages may hold for cemeteries	1455a	416
turnips, common flat, 42 lbs, a bushel	1665	484
turnpike, abandoned deemed highway	1293	324

U.

UNITED STATES—		
property of, in state, exempt from taxation	1038	208

UNKNOWN OWNERS—	<i>Sec. Page.</i>
of scays, how notified of taking up.....	1609 469-470
of lost money, or goods, how notified of finding	1614 472
UNRECORDED ROADS—	
ten years' user makes legal highway.....	1294 325
supervisors may discontinue.....	1292 324

V.

VACANCIES—	
what events made.....	962 194
when filled by election or appointment in state or county officers or congressmen	79 45
election to fill, in office of state senator or congressman, how notified	80 45
other cases that may be filled by special elections	81 46
when filled in supreme and circuit judgments.....	88 48
<i>how filled:</i>	
in office of the justice of the peace.....	845 161
in town offices	788 127
in town board.....	791 128
in office of county superintendent of poor.....	1520 488
VAGRANT—	
boy cannot be sent to Industrial School until town supervisors have been notified	4968 503
VALUATION—	
of property for taxation, how made.....	1052 217
VENUE—	
<i>change of, in justices' courts:</i>	
in action to collect tax on personal property.....	1101 248
in proceedings on laying out highway	1278 308
VERDICT —	
<i>in justices' courts:</i>	<i>Sec. Page.</i>
on laying out highway.....	1288 390
on laying out town drain.....	1368 376
on laying out county drain	1877 381
VETERINARY SURGEON —	
duties of. <i>Note</i>	492
VILLAGES —	
street improvement tax uncollected to be returned delinquent; lots to be sold	907 168
collection of final judgment against village	923 170
<i>pecially incorporated:</i>	
delinquent tax how returned and collected.....	1 171
tax collected to be paid to village treasurer.....	2 172
may levy tax to build or repair sidewalks.....	[1 172
tax for, levied upon lots, how assessed.....	1 172
same, how collected.....	2 178
tax collected to be returned delinquent; lots to be sold.....	3 173
town treasurer to pay over to village treasurer tax collected	4 174
if owners are delinquent, trustees may build or repair....	5 174
each village to constitute separate road district, ch. 265 laws 1885	174
VOTERS—	
(See ELECTORS.)	
votes recounted, how. (See INSPECTORS.)	

W.

	<i>Sec.</i>	<i>Page.</i>
WAGER —		
on election, disqualifies as voter.....	12	6
WARD —		
votes of, to be rejected	39	27
WARRANTS —		
for collection of taxes in towns.....	1081	232
for collection of sum withheld by town treasurer	1118	252
extension of tax warrants.....	1108, 1109	247
for collection of highway taxes.....	1241	275
for appointment of commissioners on road appeal.....	1279	309
to seize property of absconding parent.....	1506, 1507	432
in bastardy proceedings.....	1530	442
upon complaint for unlawful liquor selling.....	1551	452
for removal of nuisance or source of filth.....	1415	406
WATER-COURSE —		
penalty for injuring highway by diverting.....	1827	347
drains to enlarge or straighten, how laid.....	1859	360
obstructions in, how removed	1884	384
penalty for obstructing.....	1883	384
WATERING PLACES —		
highways.....	1347a	358
WEARING APPAREL —		
exempt from taxation.....	1033	209
WEEDS —		
spread of noxious, how punished.....	1431a	420
WEIGHTS AND MEASURES	1662-1670	484-485
WILD ANIMALS —		
(See ANIMALS.)		
WHEAT —		
sixty pounds to be the measuse of a bushel	1665	484
WHITE DAISIES to be destroyed	1481a	420
WISCONSIN JOURNAL OF EDUCATION —		
school authorities may subscribe for.....	508	94
WITNESSES —		
attendance may be compelled before committees of in-		
vestigation of town boards, etc.....	4053	501
subpoena, how served	4055	502
WOMEN —		
eligible to school offices.....	513	94
WOOD —		
taxes, when lien on.....	1086	237

Y.

YARD —		
highway not to be laid through, when... ..	1263	269

Z.

ZINC —		
zinc furnace exempt from taxation	1038	210

